





European Union  
Civil Protection and  
Humanitarian Aid



# Sexual Offences & Domestic Violence (SODV) Act, 2018





# CONTENTS

## I. INTRODUCTION

What is the Sexual Offences and Domestic Violence (SODV) Act, 2018? .....	01
Why is it important? .....	01
Important things to note about the SODV Act .....	02

## II. SIMPLIFIED SECTIONS OF THE ACT:

### OFFENCES AND SENTENCES

Part II: General Offences .....	03
Part III: Commercial Sexual Activities .....	10
Part IV: Offences Related to Pornography .....	13
Part V: Offences Involving Children .....	17
Part VI: Offences Involving Persons with Disabilities .....	21
Part VII: Other Offences .....	24
Part VII: Sexual Harassment .....	25
Part IX: The National Register for Sexual Offenders .....	26
Part X: Domestic Violence .....	31
III. OTHER IMPORTANT ISSUES IN THE ACT .....	35
IV. WHERE TO GET HELP .....	37



# What is the Sexual Offences and Domestic Violence Act, 2018?

The Sexual Offences and Domestic Violence Act, 2018, which is commonly called “SODV”, is a law passed by the Parliament of the Kingdom of Eswatini. This law started operating in August 2018.

The purpose of the law is to address matters related to Sexual Offences and Domestic Violence in Eswatini.

The Act, therefore, aims to strengthen the response to GBV by:

- ▶ Preventing abuse
- ▶ Increasing reporting of abuse
- ▶ Protecting Victims /survivors by ensuring they are properly cared for when abuse is reported and that they are supported before, during and after a court case
- ▶ Strengthening the different structures (such as police, courts, hospitals and organisations) that deal with abuse cases
- ▶ Making sure abusers are brought before justice

## **It was important to make this law because:**

- ▶ The old laws were very outdated and did not cover all forms of GBV, or the new ways in which it is now happening
- ▶ Victims/survivors were not properly supported because the old laws did not take account of the trauma and effects of the violence experienced by them under the old laws the sentences given were too light when looking at the seriousness of the abuse.

**Anyone interested in getting a copy of this Act can buy it at the Government Printers (currently Webster Print) in Mbabane, or download a copy from the Government of Eswatini website.**



## Things to Note About the SODV Act, 2018

### **It is an offence under this Act to deliberately / intentionally give a false statement**

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- ▶ It **protects and helps *everyone***: girls, boys, women and men.
- ▶ It **punishes *anyone* who abuses** another person, whether the abuser is male or female.
- ▶ It **raises the age of consent for sexual activity to 18**

The law states that anyone under the age of 18 is a child and therefore cannot consent to sexual activity.

- ▶ **Provides special protection for children and persons with disabilities**
- ▶ **Provides increased sentences**
- ▶ **The Act establishes a National Register for Sex Offenders.** This will be a record of people who have been found guilty of doing sexual crimes.

### **Everyone has a duty to report abuse (Section 70)**

The law makes it a duty for everyone to report to the police or relevant structure if they **see, hear of or suspect that a sexual offence** is happening, or is about to happen.

#### **Not reporting abuse is an offence.**

**Sentence: a fine not exceeding E1000;**

**Imprisonment not exceeding 3 months: or both.**

It is also an offence to force someone not to report a sexual offence, or to withdraw a report (Section 71)

Anyone who does this can be sentenced to **a fine not exceeding E25 000: or imprisonment not exceeding 5 years ; or both**



## Part II: General Offences (Rape Section 3)

### What is the crime of rape?

- ▶ Rape is when a person does a sexual act to another person (the victim/survivor) when they are not in agreement.
- ▶ Rape can be done by a man or a woman.
- ▶ A victim/survivor of rape can be a woman or a man.

### A sexual act is when:

- i. A person inserts their private parts into the private parts, anus or other bodily opening of another person; or
- ii. A person inserts any other part of their body, or an object into the private parts, anus or other bodily opening of another person, for the sexual pleasure of that person or another person.
- iii. It does not matter how far the private part, other body part or object is inserted into the private parts, anus or other bodily opening of the other person.

### A sexual act done under any of the following circumstances is rape:

#### 1. Coercion

This is when a person puts pressure on the other person in any of the following ways in order to do a sexual act to them:

- a. Uses force against a person or against the property of that person, or any other person
- b. Threatens to harm the other person or someone else, the other person's property or someone else's property
- c. Abuses or takes advantage of a position of power to perform a sexual act with another person such that the other person is not able to show that they refuse or do not want to do it.

#### 2. False pretences or fraudulent means

- a. The person is made to believe they are doing a sexual act with a certain person, when the person they are doing the act with, is actually someone else

- b. The person is made to believe that what is being done is not a sexual act, but something else

### 3. Incapable of appreciating the nature of the sexual act in law

This is when the other person is not able to understand exactly what is happening when a sexual act is being done to them. The law says a person does not have this understanding if that person:

- a. Is asleep or unconscious; or
- b. Has taken any medicine, drug, alcohol, or any substance that affects their awareness and ability to make sound decisions; or
- c. Is mentally disabled; or
- d. Is below 18 years of age

### 4. Duress

This is when the other person is put under any form of pressure so that a sexual act can be done to them.

### 5. Psychological oppression

This is when the other person is put under mental pressure so that a sexual act can be done to them.

### 6. Fear of violence

This is when the other person is made to be afraid that something violent will be done to them if they do not participate in the sexual act.

## Sentences

- There are **no fines for rape** – only imprisonment sentences.
- A sentence given for rape cannot be postponed.
- **NB: it is the courts that will determine the imprisonment sentences depending on many factors including the jurisdiction of that court.**

Sentences	
If the <b>victim/survivor is 0-14 years of age</b>	<b>Imprisonment not exceeding 25 years</b> , if it is the first time the person is found guilty of rape and <b>not exceeding 35 years</b> , if it is not the first time
If the <b>victim/ survivor is 15-17 years of age</b>	<b>Imprisonment not exceeding 20 years</b> , if the person is found guilty of rape and <b>not exceeding 26 years</b> if it is not the first time
If the <b>victim/ survivor is 18 years of age or above:</b>	<b>Imprisonment not exceeding 18 years</b> if it is the first time the person is found guilty of rape and not <b>exceeding 25 years</b> if it is not the first time
If the <b>victim/ survivor is 18 years of age or above</b>	<b>Imprisonment not exceeding 20 years</b> if it is the first the person is found guilty and <b>not exceeding 30 years</b> if it is not the first time
<p style="text-align: center;"><b>Where there are aggravating circumstances:</b> Where there are no aggravating circumstances: <b>Aggravating circumstances</b> means where there are things that make the doing of the crime worse (such as the use of a weapon like a knife) and can increase the sentence given by the court</p>	





# Incest (Section 4)

## What is Incest?

Incest is when a person does or tries to do an act of **sexual penetration** with any of these close relatives: child, brother, sister, mother, father, grandmother, or grandfather.

(This includes where the relationship is half, step, or because of adoption: for example, a half-brother, step-sister or adopted child.)

Incest is a crime even if the people involved agreed to do it.

### “Sexual penetration” is when:

- ▶ A person inserts their private parts into the genital organs, anus, mouth or other bodily opening of another person;
- ▶ A person inserts any other part of their body, or any object, including a body part of an animal into the genital organs, anus, or other bodily opening of another person;
- ▶ A person inserts the genital organs of an animal into the mouth of another person.

It does not matter how far the genital organs, other body part or object enter into the private parts, anus, mouth or any other bodily opening of the other person.

Sentences	
If the victim/survivor is <b>0-13 years of age</b>	<b>Imprisonment not exceeding 25 years</b>
If the victim/survivor is <b>14-17 years of age</b>	<b>Imprisonment not exceeding 20 years</b>
If the victim/ survivor is <b>18 years of age or above:</b>	<b>Imprisonment not exceeding 10 years, or a fine not exceeding E50 000 or both</b>
<b>If the two people agreed to commit the incest</b>	<b>Imprisonment not exceeding 4 years or a fine not exceeding E20 000</b>



# Sexual Assault Offences

## (Section 5-8)

### Sexual assault

This is when a person **sexually violates** another person without that other person's consent

**Sentence:** Fine not exceeding E30 000 or imprisonment not exceeding 5 years; or both.

### Inspiring belief of sexual assault

This is when a person makes another person believe that they shall be sexually violated.

**Sentence:** Fine not exceeding E20 000 or imprisonment not exceeding 10 years; or both.

### Compelled sexual assault

This is when a person forces someone else to do an act of sexual violation with another person, without the consent of both people.

**Sentence:** A fine not exceeding E20 000 or imprisonment not exceeding 10 years; or both.

### Compelled self-sexual assault

This is when a person forces another person to do any sexual activity to themselves such as masturbation, sexually excite themselves, perform sexual suggestive acts, penetrate their own genital organs, anus or other bodily openings in any way; or engage in bestiality (sexual activity with an animal).

**Sentence:** A fine not exceeding E30 000 or imprisonment not exceeding 10 years; or both

**A “sexual violation” is an act that is not an act of sexual penetration but causes the following:**

- i. Direct or indirect contact between the genital organs, anus, breasts (in the case of a female) of a person with any part of the body of another person or an animal; or any object, including an object that looks like, or represents the genital organs or anus of a person or animal.
- ii. Direct or indirect contact between the mouth of a person and the mouth, genital organs, anus, or breasts of another person (in the case of the female), and any part of the body of the other person that can be used for sexual penetration or to make someone sexually excited.
- iii. Direct or indirect contact between the mouth of another person and the genital organs or anus of an animal.
- iv. Masturbation of one person by another.
- v. Inserting any object that looks like or represents the genital organs of a person or an animal into another person's mouth.

## Unlawfully Administering a Substance (Section 9)

This is when a person gives or makes another person take a substance, without their agreement, in order to overpower that person, or to disturb that person's awareness and ability to make decisions, because they want to do a sexual activity with that person, or let someone else do sexual activities on that person.

**Sentence:** A fine not exceeding E20 000 or imprisonment not exceeding 10 years; or both

## Unlawful Stalking (Sections 10-12)

**Unlawful stalking** is when someone behaves in one or more of the following ways towards another person **such that the other person becomes reasonably afraid:**

### Forms of stalking:

- i. Following, hanging around, watching or approaching the other person;
- ii. contacting the other person in any way, including by phone, email or using technology;
- iii. Hanging around, watching, or going near or into a place where the other person lives, works or visits;
- iv. Making sure the other person finds or sees material that is vulgar or makes that person feel insulted by giving it to them directly, or leaving it in a place where they will see it
- v. Doing something to scare, harass or threaten the other person, whether using violence or not
- vi. Acting violently or threatening to be violent towards the property of any person, including the property of the stalker.

The behaviour can happen once, but last a long time, or it can happen at different times.

In both cases, the behaviour can either be the same action or different actions.

It does not matter whether the person who is doing the stalking wants the other person to know that they are being stalked by them; or whether the stalker believes they are stalking a particular person, yet it is someone else.

**Sentence:** A fine not exceeding E20 000 or imprisonment not exceeding 10 years; or both

## Actions that are not unlawful stalking

### A person is *not* taken to be unlawfully stalking when:

- Their behaviour is reasonable as part of their official work
- Their behaviour is reasonable for a person who wants to give or get information from the other person that they have a right to give or get his or her behaviour is reasonable
- In relation to proposing a romantic relationship to the other person

### How can someone protect themselves against a stalker?

- ▶ If a person believes that they are being stalked, they can apply to court for a **Restraining Order**. This is an Order given by the court to protect a stalked person. The Order tells the suspected stalker to stop his or her behaviour.
- ▶ A prosecutor or any other concerned person in the case can also apply for a **Restraining Order** on behalf of the stalked person.
- ▶ A magistrate/judge can also decide to give a **Restraining Order** after hearing all the evidence in the case, if he or she believes there is a good reason to do so, even if the person accused of stalking is not found guilty.
- ▶ A court can decide to change or cancel a **Restraining Order** at any time.
- ▶ A person who continues stalking another person even though they know there is a **Restraining Order** against them commits a crime.

**Sentence:** A fine not exceeding E25 000 or imprisonment not exceeding 10 years; or both



## Part III: Commercial Sexual Activities

### Commercial Sexual Exploitation Offences (Sections 13-14)

**Commercial sexual exploitation** is when a person does any of the following actions to another person, in exchange for money, or any other type of payment or favour:

- Makes the other person agree to let another person do sexual acts or sexual violations with, or on them
- Offers or arranges for the other person, or makes an agreement with them to be available to do sexual acts, or sexual violations with someone else
- Arranges or allows someone to do sexual acts, or sexual violations with that person's child, or a child that the person is caring for
- Holds another person, using threat, pressure, lies, force, or abuse of power so that sexual acts or sexual violations can be done with or on that person

**It does not matter whether the money or other type of payment or favour is made to the person making the arrangements for these activities, or to someone else.**

**Sentence:** A fine not exceeding E100 000; or imprisonment not exceeding 20 years; or both  
**Where the victim is a child, the sentence may be imprisonment not exceeding 25 years**

**Promoting commercial sexual exploitation.** A person promotes commercial sexual exploitation when he or she:

- Prints or produces any information that aims to advertise or arrange any activity of commercial sexual exploitation
- Advertises or encourages commercial sexual exploitation or similar activities and sexual violations between two or more people.

**Sentence:** A fine not exceeding E50 000 or imprisonment not exceeding 10 years  
**Where the victim is a child, the sentence may be jail up to up to 25 years**

## Prostitution (Sections 15–17)

**Prostitution** is when a person, in exchange for money or any other form of payment does or offers to do any of the following actions:

Sexual activities with another person, including sexual intercourse, a sexual act, masturbation, or using the mouth of the person on the genital organs or anus of another person (oral sex) any other activity where someone is used for the sexual pleasure of another person.

It does not matter whether the arrangement for prostitution was offered by the person doing the sexual activity, or by someone else. It also does not matter that the payment will be made to the person doing the sexual activity, or to someone else.

### Procuring Prostitution

A person who engages another person to do prostitution commits a crime and faces

**Sentence:** A fine not exceeding E50 000 or imprisonment not exceeding 15 years; or both.

**Where the victim is a child**, the person faces **Sentence:** imprisonment not exceeding 20 years in jail.

### Benefitting from Prostitution

A person who receives money or any other type of payment or favour as a result of another person doing sexual acts or sexual violations, faces **Sentence:** A fine not exceeding E50 000 or imprisonment not exceeding 15 years; or both.

- ▶ **A child cannot be charged with this crime.**

### Living From the Earnings of Prostitution

A person who lives completely or partly on the payments for sexual acts or sexual violations done by another person faces **Sentence:** A fine not exceeding E30 000 or imprisonment not exceeding 15 years; or both.

- ▶ **A child cannot be found guilty of this crime.**

## Keeping a Brothel (Sections 18-22)

A “**brothel**” is a house or place where people visit to do prostitution, or any other sexual activities in exchange for money, or any other form of benefit

Operating or “**keeping a brothel**”. The following persons are also taken as keeping a brothel:

- Any person who owns, controls, manages or assists in managing a brothel
- Any person who lives in a brothel unless that person proves that she or he did not know that the house or place was a brothel
- Any person who knowingly receives the whole or any share of any monies taken in a brothel
- Any person who allows a house or place that they are renting, or where they live to be used as a brothel
- Any person who owns a house or place and rents it out, knowing that the place will be used or is being used as a brothel
- Any person that is found in a brothel and who refuses to give the name and identity of the owner or manager of the brothel
- Any person whose husband or wife lives in, manages or helps in managing a brothel, unless the person proves that she or he did not know that the house or place was a brothel; or that she or he lives in a different place from their husband or wife, and did not accept any money knowing that it was made from the business of the brothel.

**Sentence:** A fine not exceeding E50 000 or imprisonment not exceeding 15 years; or both

**A lease agreement for a brothel is invalid.** This means that the agreement is not accepted by the law, and the persons who make the agreement cannot legally claim any rights under it.

If the house or place becomes a brothel after the agreement is made, the agreement will become invalid from the date that the house or place became a brothel.

If the person who owns the house or place proves that he or she did not know it was used as a brothel, that person has a right to claim for any loss or harm that has happened as a result of the lease agreement being made invalid.

**The owner of a house or place used as a brothel has a right to apply to a Magistrate for the person who is using the house or place as a brothel to be immediately evicted**



## Part IV: Offences Related to Pornography

**Pornography** is a picture or video, whether real or acted out, showing any of the following actions:

- i. A person participating in, or helping someone else participate in sexual acts, or sexual violations, or showing nakedness for sexual pleasure
- ii. Clear sexual behaviour that lowers a person's dignity or encourages causing harm

### Distributing or Publishing Pornography (Section 23)

A person distributes or publishes pornography when they:

- a. Make, advertise, or give pornographic material to an adult who has not consented, or to a child.
- b. Make or show pornographic material that does not have the name and address of the person making or showing the material, the age restriction for looking at the material, or other important information about what the material is about.
- c. show a pornographic film to adults who have not consented or to children, whether this happens in a private or a public setting

#### Sentences

A fine not exceeding E50 000 or imprisonment not exceeding 15 years; or both

Where a person does this crime to their child, or a child they are responsible for

A fine not exceeding E75 000 or imprisonment not exceeding 20 years; or both.

### Using Children for Child Pornography (Section 24)

This is when a person uses, or helps to use a child to make or assist in making any material that shows a child doing or participating in any sexual activity, including any of the following actions:

- i. Anything that is a sexual offence; sexual violation or sexual penetration
- ii. Anything that shows the genital organs of the child being sexually excited



- iii. Exposing the body or body parts of the child in a way that is sexually abusive and lowers the dignity of the child
- iv. The child behaving in a sexual suggestive way, including sexually exciting themselves
- v. The child being made to feel pain, or to make someone else feel pain for sexual pleasure
- vi. The child participating in or helping someone else participate in sexual activities
- vii. The child being present, participating or being involved in any other way when someone else is doing these sexual activities

**Sentence:** Imprisonment not exceeding 25 years in jail

## Other Crimes Related to Child Pornography (Sections 25-28)

### Making child pornography

This is when a person makes or tries to make any pornographic material involving a child.

**Sentence:** Imprisonment not exceeding 25 years in jail

### Benefitting from child pornography

This is when a person gains by receiving money or any other form of payment for making child pornography.

**Sentence:** Imprisonment not exceeding 20 years in jail

### Distributing pornographic material involving a child

This is when a person shares, in any way, pornographic material involving a child with others.

**Sentence:** Imprisonment not exceeding 20 years in jail

### Possessing pornographic material involving a child

This is when a person is keeping pornographic material involving a child

**Sentence:** A fine not exceeding E75 000 or imprisonment not exceeding 15 years in jail; or both

## Defences (Section 29)

A person who is charged with any of the crimes related to child pornography can defend themselves by proving that what they did was reasonable in the circumstances, and that it was not done for sexual satisfaction, but for reasons that are genuinely artistic, educational, legal, medical, scientific or for public benefit including Swazi cultural events.

## Using persons with disabilities for pornographic purposes (Section 31)

This is when a person uses or helps to use a disabled person to make any material that shows a disabled person doing or participating in any sexual activity, including any of the following actions:

- i. Anything that is a sexual offence; sexual violation or sexual penetration
- ii. Anything that shows the private parts or breasts of a disabled person being sexually excited, or exposed in a way that is sexually abusive and lowers the dignity of the disabled person
- iii. The disabled person behaving in a sexual way, including sexually exciting themselves
- iv. The disabled person being made to feel pain or making someone else feel pain for sexual pleasure
- v. The disabled person participating in, or helping someone else participate in sexual activities
- vi. The disabled person being present, participating or being involved in any other way when someone else is doing these activities

**Sentence:** Imprisonment not exceeding 20 years in jail

## Benefitting from using persons with disabilities for pornography (Section 32)

This is when a person gains by receiving money, or any other form of payment for using a disabled person for making pornographic material.

**Sentence:** Imprisonment not exceeding 20 years in jail

## Observations or recordings that interfere with privacy (Section 33)

It is a crime to intentionally watch, or take a picture or a video of another person, in a situation where a reasonable adult would expect privacy.

- ▶ Without the consent of that person
- ▶ Where that person is in a private place, or is doing a private act

**Sentence:** Imprisonment not exceeding 15 years in jail

It is a crime to watch, take a picture or a video of the genital or anal area of another person

- ▶ Whether covered or naked
- ▶ Without consent of that person
- ▶ In a situation where a reasonable adult would expect privacy

**Sentence:** Imprisonment not exceeding 15 years in jail

**A recording** of a picture or video of:

- ▶ Another person in a private place, doing a private act, or
- ▶ The private parts or anus of another person, whether covered or not in a situation where a reasonable adult would expect privacy is not allowed

It is a crime to share a visual recording of another person in his or her private space having reason to believe that it is not allowed.

**Sentence:** Imprisonment not exceeding 15 years in jail

**Law enforcement officers** such as the police are not taken as breaking the law if they do these things as part of their official duties, and if what they do is reasonable in the situation in order for them to do their duty.



## Part V: Offences Involving Children

### Indecent treatment of children (Section 36)

This is when a person:

- i. Makes a child perform sexual acts,
- ii. Gets a child to commit a sexual violation;
- iii. Allows themselves to be treated in a sexual way by a child
- iv. Exposes a child to a sexual violation being done by that person or by someone else
- v. Intentionally exposes a child to any sexual object, or picture, or film, audio-tape, video tape,
- vi. Takes a sexually offensive image of a child

Sentences	
If the victim is 0-11 years of age	Imprisonment not exceeding 25 years
If the victim is 12-17 years of age	Imprisonment not exceeding 20 years
If the person who treats a child in this way is the child's grandparent, parent, or someone taking care of the child	Imprisonment not exceeding 20 years

### Maintaining a sexual relationship with a child (Section 37)

This is when a person is in a relationship with a child in which they have performed more than one sexual act over any period of time.

**Sentence:** Imprisonment not exceeding 20 years

The person can also be charged with any other sexual offence in the Act. Where the person is found guilty, the sentences given must be served one after the other.

Where:

- The parties involved are both below the age of 18,
- They both consented to the activities in Sections 36 and 37
- There is an age difference between them of not more than 5 years

This can be a defence and the DPP must give written permission to start the prosecution of the case.

## Sexual grooming of children (Section 38)

**Sexually grooming a child is when a person uses different ways to attract a child to have a secret sexual relationship with the person**

Sexual grooming of children includes when a person does any of the following actions:

Gives or shows a child anything that will be used for doing a sexual act, or any pornographic material in order to convince or make the child participate in a sexual act with that person or anyone else.

Where a person does any act with a child, or in the presence of a child, or talks about doing any act to a child, or in the presence of a child in order to convince the child to do the following:

- i. To do a sexual act with that person, or someone else
  - ii. To masturbate in the presence of the person or someone else, while that person or the other person is watching
  - iii. To be in the presence of or watch the person, or someone else doing a sexual act, or an act of self-masturbation
  - iv. To see or be used for pornography
  - v. To uncover all or any part of the child's body for that person or someone else to see in a manner that sexually violates or humiliates the child
- 
- ▶ Arranges a meeting or communication by any means with a child, in any part of the world with the intention to do a sexual act with the child
  - ▶ Following the meeting or communication, the person makes a child travel to where the person is in order to commit a sexual act with that person,
  - ▶ Following the meeting or communication the person travels to meet the child, so that the person can commit a sexual act with the child
  - ▶ Having met or communicated with a child by any means from to and in any part of the world causes the child to travel to any part of the world in order to meet that person with the intention to commit a sexual act with the child
  - ▶ During the meeting or communication makes a child do a sexual act with the person, or makes the child describe the doing of a sexual act
  - ▶ Makes a child send the person any pornographic material involving the child
  - ▶ Or another person, by any form of communication, including technology

**Sentence: Imprisonment not exceeding 25 years in jail**

## Promoting sexual grooming of children (Section 39)

Promoting the sexual grooming of a child is when a person:

- ▶ Makes or distributes, or enabling the making or distribution of any object or pornographic material, or document that promotes or will be used for committing a sexual act by or with a child
- ▶ Gives, or shows another person an object, or pornographic material or document in order to convince the other person to commit a sexual act with a child
- ▶ Arranges communication, or a meeting between a child and another person by any means from, to, or in any part of the world so that the other person can commit a sexual act with the child

**Sentence:** Imprisonment not exceeding 25 years in jail

## Using electronic communication to involve children in sexual acts or sexual violations (Section 40)

- ▶ It is a crime for a person to use electronic communication to get, or to arrange for a child, or someone the person thinks is a child, to commit a sexual act or violation in the Kingdom of Eswatini or elsewhere
- ▶ To show a child, or someone the person thinks is a child, in the Kingdom of Eswatini or elsewhere anything that is indecent

Sentences	
If the victim/survivor is <b>0-17 years of age</b>	<b>Imprisonment not exceeding 20 years</b>
If the victim/survivor is <b>12-17 years of age</b>	<b>Imprisonment not exceeding 20 years</b>
If the person who treats a child in this way is the child's grandparent, parent, or someone taking care of the child	<b>Imprisonment not exceeding 25 years</b>

## Making a child to watch sexual offences or sexual activities (Section 41)

It is a crime for a person to make, or force a child to be present to watch the person or someone else, doing a sexual offence or masturbating. It does not matter whether the person does this for sexual pleasure or not.

**Sentence:** Imprisonment not exceeding 15 years

## Abduction (Section 42)

Abduction is when a person takes a child away from the child's parent, or anyone responsible for the child for the following reasons:

- i. So that the person can commit any sexual act or sexual violation with the child
- ii. So that the child can be used for any sacrifice that will harm the child
- iii. To use the child in anything that is not allowed by the law

**Sentence:** Imprisonment not exceeding 15 years



## Part VI: Offences Involving People with Disabilities

### Sexual grooming of persons with disabilities (Section 44)

Sexual grooming of a person with a physical or mental disability is when a person does any of the following actions:

- ▶ Gives or shows anything that will be used for doing a sexual act, or any pornographic material in order to convince or make a physically or mentally disabled person participate in a sexual act with that person or anyone else without consent.
- ▶ Arranges a meeting or communication by any means with a physically disabled person, in any part of the world with the intention to do a sexual act with the physically disabled person, without consent.
- ▶ Following the meeting or communication, the person makes a physically disabled person, travel to where the person is in order to commit a sexual act with that person.
- ▶ Following the meeting or communication the person travels to meet the physically disabled person, so that the person can commit a sexual act with the physically disabled person.
- ▶ Having met or communicated with a physically disabled person, by any means from to and in any part of the world causes the disabled person, to travel to any part of the world in order to meet that person with the intention to commit a sexual act with the physically disabled person.
- ▶ During the meeting or communication makes a physically disabled person, do a sexual act with the person, or makes the disabled person, describe the doing of a sexual act
- ▶ Makes a disabled person, send the person any pornographic material involving the disabled person;
- ▶ Or another person, by any form of communication, including technology.

**Sentence:** Imprisonment not exceeding 25 years in jail



## Promoting sexual grooming of a person mental disability (Section 39)

Promoting the sexual grooming of a person with a mental disability is when a person:

- ▶ Makes or distributes, or enabling the making or distribution of any object or pornographic material, or document that promotes or will be used for committing a sexual act by or with a person with a mental disability gives, or shows another person an object, or pornographic material or document in order to convince the other person to commit a sexual act with a person with a mental disability.
- ▶ Arranges communication, or a meeting between a person with a mental disability and another person by any means from, to, or in any part of the world so that the other person can commit a sexual act with the person with a mental disability.

**Sentence:** Imprisonment not exceeding 25 years in jail

## Using electronic communication to involve children in sexual acts or sexual violations (Section 40)

- ▶ It is a crime for a person to use electronic communication to get, or to arrange for a child, or someone the person thinks is a child, to commit a sexual act or violation in the Kingdom of Eswatini or elsewhere.
- ▶ To show a child, or someone the person thinks is a child, in the Kingdom of Eswatini or elsewhere anything that is indecent.

Where a person does any act with a mentally disabled person, or in the presence of a mentally disabled person or talks about doing any act to a child, or in the presence of a child in order to convince the child to do the following:

- i. To do a sexual act with that person, or someone else
  - ii. To masturbate in the presence of the person or someone else, while that person or the other person is watching
  - iii. To be in the presence of or watch the person, or someone else doing a sexual act, or an act of self-masturbation
  - iv. To see or be used for pornography
  - v. To uncover all or any part of the mentally disabled person body for that person or someone else to see in a manner that sexually violates or humiliates a mentally disabled person
- Arranges a meeting or communication by any means with a mentally disabled person, in any part of the world with the intention to do a sexual act with the physically disabled person, without consent

- Following the meeting or communication, the person makes a physically disabled person, travel to where the person is in order to commit a sexual act with that person.
- Following the meeting or communication the person travels to meet the mentally disabled person, so that the person can commit a sexual act with the physically disabled person.
- ▶ Having met or communicated with a mentally disabled person, by any means from to and in any part of the world causes the disabled person, to travel to any part of the world in order to meet that person with the intention to commit a sexual act with the physically disabled person.
- ▶ During the meeting or communication makes a mentally disabled person, do a sexual act with the person, or makes the disabled person, describe the doing of a sexual act.
- ▶ Makes a disabled person, send the person any pornographic material involving the mentally disabled person.

**Sentence:** Imprisonment not exceeding 25 years



## Part VII: Other Offences

### Bestiality (Section 45)

Bestiality is when a person does something that results in:

- ▶ Their genital organs going into the genital organs, anus or mouth of an animal
- ▶ The genital organs of an animal going into the person's genital organs, anus or mouth
- ▶ Masturbating an animal

**Sentence:** A fine not exceeding E25 000 or imprisonment not exceeding 10 years; or both

### Necrophilia (Section 46)

Necrophilia is when a person commits a sexual act with **a corpse**

**Sentence:** A fine not exceeding E50 000 or imprisonment not exceeding 15 years; or both

### Flashing (Section 47)

Flashing is when a person intentionally shows, whether or not for sexual satisfaction, their genital organs or anus, or the genital organs or anus of someone else to another person without the consent of that other person

**Sentence:** A fine not exceeding E15 000 or imprisonment not exceeding 5 years; or both

#### **It is a defence against flashing to show that the genital organs or anus were shown to another person in the following circumstances:**

- ▶ The exposure or display of the genital organs was by the parent or guardian of the child;
- ▶ The child was under the age of twelve;
- ▶ The child was under the age of twelve; The child required assistance with bathing;
- ▶ The exposure was only for the purposes of the parent and child bathing together; and
- ▶ No unlawful sexual act was committed during the course of the bathing.

It shall further be a defence to the offence provided for in subsection (1) to establish that the exposure was-

- (a) Strictly for medical or health purposes;
- (b) By the parent or guardian for ascertaining, on reasonable suspicion, that the child might have been sexually violated or molested;
- (c) For purposes of gathering evidence.



## Part VIII: Sexual Harrassment (Section 48)

**Sexual harassment** is when a person does any of the following actions:

- ▶ An unwanted or unwelcome act of being physically close to another person, and doing things like patting, pinching or touching the other person in a sexual way.
- ▶ Directly or indirectly makes an unwanted or unwelcome demand or request for sexual favours from another person.
- ▶ Does any unwelcome sexual conduct towards another person, including offensive telephone calls and exposure to the other person, or

The person doing the sexual harassment does it with the aim of insulting, shaming or intimidating the other person or where it would be expected that a person would feel insulted, shamed or bullied, looking at:

- The sex, age or race of the other person
- Any disability that the other person has
- The relationship between the person doing the act and the other person
- If the act was done in a public or private place
- The time when the act was done
- Any other circumstances that a court believes is important

**Sentence:** A fine not exceeding E25 000 or imprisonment not exceeding 10 years; or both.



## Part IX: The National Register for Sexual Offenders (Section 56-58)

The Government will keep **a record of sexual offenders** called a National Register for Sex Offenders. The Register is for the protection of victims of sexual offences, especially children and persons with disabilities.

### Persons whose information will be in the Register

The Register will contain a list of people who have been found guilty by a court of doing a sexual offence, whether before or after the SODV Act was passed, or whether they did the offence in or outside the country.

### Information on sex offenders will be given to the Registrar as follows:

- ▶ **A court that finds a person guilty of a sexual offence and sentences the person**, or makes a special decision about their mental state in the case, must also order that the persons' information is recorded in the Register.
- ▶ The court must explain to the person what is in the order and what it means. The order must immediately be given to the Registrar. The employer of the person must also be informed of the order.

### Within 3 months after the Act has started working:

**The Commissioner General of the Correctional Services must forward** a list of people who are in jail or have been in jail for sexual offences to the Registrar. The Commissioner must inform any affected offender who is currently in jail that his or her information has been forwarded to the Registrar and what this means.

**The National Commissioner of the Royal Eswatini Police Service must forward any information** the police have on any persons that have been found guilty of sexual offences.

**The Director of Health Services must forward information** on all persons in whose cases a court made a special finding about the mental state of the person when they did

the crime. The Director must inform every person affected that their particulars have been forwarded to the Registrar.

When the Registrar receives this information it must be immediately recorded in the National Register for Sex Offenders.

### Contents of the Register

Information contained in the Register about the sex offender will include the following:

- ▶ Full names, age, profession or occupation
- ▶ Physical address and other contact details, including postal address;
- ▶ ID number, passport number or driver's licence number
- ▶ The sexual offence the person was found guilty of doing; the sentence the offender was given
- ▶ Where and when the decision on the case and sentence were taken; and the person's prisoner ID number
- ▶ If the person is in or has been to jail
- ▶ Which court heard the case, and the case number
- ▶ Where a court made a special finding about the mental state of the offender during the case, the name of the hospital or doctor the person was treated by
- ▶ Any other information that may be required

If the offender was found guilty of a sexual offence, and sentenced outside Eswatini, the same information will be collected from that country or any other legal source and included in the Register.

### A sex offender must notify the Registrar of changes in his or her particulars

Where there is a change to any of the information about a person whose name is in the National Register for Sex Offenders, that person must inform the Registrar of the change within 14 days.

### Failing to inform the Registrar of changes is an offence.

**Sentence:** A fine not exceeding E7 000 or imprisonment not exceeding 18 months.

### Confidentiality of the information in the Register

The information contained in the National Register for Sex Offenders is confidential. The Registrar, and any other person who gets information as a result of their work under the Act, are not allowed to reveal that information, unless this is necessary for carrying out the law, or is required by the court.

**Revealing information for any reason other than what is required by the Act is an offence.**

**Sentence:** A fine not exceeding E10 000 or imprisonment not exceeding 2 years.

**Only certain people are allowed to get information in the Register  
The information must be requested only in order for a person to be able  
to do a duty the person has under the Act**

### **Removing a person's particulars from the Register**

A person whose information is in the Register can apply for the removal of his or her information from the Register 10 years after they have served their sentence, if it was the first time he or she was found guilty of a sexual offence.

If the person has been found guilty of sexual act more than once, their **information may not be removed** from the Register.

A person in whose case a court made a special finding about their mental state can apply for their information to be removed from the Register **5 years after** the person recovers, or is released by the court from any limits it had made on the person.

If the Registrar finds that a person's **information was wrongly included** in the Register, the information can be removed.

### **Registered sex offenders are not allowed certain types of work:**

Anyone whose details are in the National Register is **not allowed**:

- ▶ To work in anyway with children, or with persons who are physically or mentally disabled
- ▶ To be given a position where that person supervises or cares for a child; or where they can get access to children or to places where children are gathered
- ▶ To be given a position where that person supervises or cares for a disabled person, or where they can get access to disabled persons, or to places where disabled persons are gathered
- ▶ To be given a licence to manage or run any place or business that supervises or cares for children, or persons with disabilities
- ▶ To be appointed as a foster-parent, caregiver or adoptive parent
- ▶ To be appointed legal guardian of a person who is mentally disabled

Any person who does not comply with the above may get a;

**Sentence:** A fine not exceeding E25 000 or imprisonment not exceeding 5 years or both

### **Duties of persons who are employed, or are applying for a job in a place that works with children, or persons with disabilities**

1. A person who is employed and was found guilty of a sexual offence, must tell his or her employer this information.
2. A person who is applying for a job at a place where employees work with or care for children or persons with disabilities, and was found guilty of a sexual offence must include this information in his or her job application.

**Not revealing this information is an offence.**

**A fine not exceeding E10 000 or imprisonment not exceeding 2 years or both**

### **Duties of employers who hire people to work with children, or persons with disabilities**

**An employer in terms of the Act is a government or private body, business, or a person who employs a person to work with or care for children, or persons with disabilities**

1. An employer must apply to the Registrar of the National Register for Sex Offenders for a certificate with information about whether the particulars of an employee, or someone applying for a job is in the Register.
2. Where an employee's name is in the Register, an employer is not allowed to continue employing the person.
3. In the case of a person applying for a job, an employer is not allowed to hire a person whose name is in the Register.
4. Where a person does not tell his or her employer that he or she has been found guilty of a sexual offence, the employer must immediately stop the person from working.
5. An employer must take steps to prevent an employee who is in the Register from continuing to have access to children or persons with disabilities as part of their work. This can include transferring the person to another position. However, if these steps do not guarantee the safety of the children, or persons with disabilities, the person's employment must be stopped immediately.

**It is an offence for an employer not to do the above.**

**Sentence:** A fine not exceeding E10 000 or imprisonment not exceeding 2 years



## Licences for organisations or businesses working with children or persons with disabilities

Before a licence is given to a person to run an organisation, or business working with or caring for children, or persons with disabilities, the authority responsible for giving licences must first check if the person applying for a licence is listed in the National Register for Sexual Offenders. If the licencing **authority or person issuing the licence fails to do this, it is an offence.**

**Sentence:** A fine not exceeding E15 000 or imprisonment not exceeding 3 years.

A person applying for such a licence must inform the licencing authority if he or she has been found guilty of a sexual offence.

A person who does not do this faces

**Sentence:** up to E15 000 fine; up to 3 years in jail; or both.

## Applications to be a foster-parent, caregiver, adoption, or curator

An authority that is responsible for applications and appointments of people as foster parents, caregivers, adoptive parents or legal guardians must first check if the person applying is listed in the National Register.

**Not checking the Register is an offence.**

**Sentence:** Imprisonment not exceeding 7 years or a fine not exceeding E20 000 or both.

A person who is applying to be appointed as a foster parent, caregiver, adoptive parent or legal guardian must inform the authorities if he or she has been found guilty of a sexual offence.

**It is an offence not to inform the authorities.**

**Sentence:** A fine not exceeding E35 000 fine or imprisonment not exceeding 7 years or both.



## Part X: Domestic Violence

**The offence of domestic violence** is when a person does an **abusive action** to another person that they have a **domestic relationship** with, which harms, or is likely to harm the other person.

### The following are different forms domestic violence included in the Act

#### 1. Physical abuse

Any act of physical violence or threatening physical violence towards the other person

#### 2. Sexual abuse

Any sexual behaviour that abuses or humiliates the other person

#### 3. Emotional, verbal and psychological abuse

- ▶ Insulting, mocking or calling the other person names
- ▶ Repeated threats to cause the other person emotional pain
- ▶ Behaving in such a controlling and jealous way towards another person such that the person's privacy, freedom or safety is disturbed

#### 4. Intimidation

- ▶ Making the other person afraid by making or sending threats to them

#### 5. Economic abuse

- ▶ Denying the other person money or other household necessities, including payment of mortgage or rent which the person is entitled to under law or necessity.
- ▶ Unreasonably selling or giving away household and other property that the other person or a dependent of that other person has a right to use.
- ▶ When a person refuses for their wife or husband to work or do any economic activity
- ▶ When a person refuses or does not allow their wife or husband to register property in their name, including the wife's maiden name.

## 6. Harassment

Making someone afraid that they will be harmed by doing the following actions repeatedly

- a. Watching or hanging around any building or place that the other person lives, works, studies, or happens to be
- b. Making telephone calls, or making someone else make telephone calls to the other person, whether or not a conversation follows
- c. Contacting the other person, including through letters, email, text messages, or delivering packages or other objects.

## 7. Stalking

Repeatedly following or aggressively approaching the other person

## 8. Damage to property

Intentionally damaging or destroying the property of the other person or property that a person has a vested interest in

**Forcefully going into the residence where the other person lives where they do not live together**

**An abusive act qualifies as domestic violence if it happens between two people who have a “domestic relationship”**

The following persons are taken to have a **domestic relationship**:

- i. Persons who are married, or were married before according to any custom or religion
- ii. Persons who live together as if they are married or lived together in the past as if they were married
- iii. Parents of a child, or persons who are, or have been guardians of a child
- iv. Persons who are family members related by blood, marriage or adoption
- v. Persons who are or have been engaged, or in any other kind of romantic or intimate relationship for any period time
- vi. Persons who live together, or have recently lived together

**Someone who makes another person do any act of domestic violence for them is taken to have done that act themselves.**

### **Sentence for Domestic Violence:**

**A fine not exceeding E75 000 fine or Imprisonment not exceeding 15 years or both**

## Protection Against Domestic Violence: Protection Orders

A person who is a victim/survivor of domestic violence can apply to court for a **Protection Order**.

**Protection Order:** This is an Order to protect the person and that person's relative(s) or friend(s) against the person accused of domestic violence.

### Other people can also apply for a Protection Order for the victim:

a police officer or an "authorised person."

An authorised person who is an adult and who has been given written permission by the victim/survivor to make the application

- ▶ Someone who is an adult and who the court believes has permission from the victim/survivor to make the application, even though that permission is not in writing
- ▶ Someone who is concerned about the health and safety of the victim/survivor, such as a counselor, teacher or social worker, but the victim/survivor cannot give written permission for the person to make the application because the victim/survivor is a child, has a mental disability, or is unconscious.

**In the case of a child, the child or any person applying for that child can make the application without help from the parent or caregiver of the child.**

### When does a court give a Protection Order?

**NB: A court may give an interim Protection Order calling on the respondent to give reasons why a Final Order should not be issued.**

A court will give a victim/survivor a Protection Order in the case where a victim or survivor has suffered abuse/violence from another person they have a domestic relationship with.

### What does the Protection Order do?

The Protection Order restricts or prohibits the accused from abusing or continuing to abuse the victim/survivor.

### When does a Protection Order start and stop?

A Protection Order starts working on the day it is made. It can be changed or cancelled by a court at any time, depending on the evidence that is given when an application for a change or cancellation is made.

People who can apply for a Protection Order to be changed or cancelled include the victim/survivor of the domestic violence, the person against whom the Protection Order was made, an authorised person or a police officer.

The court will only cancel a Protection Order if it believes that this will not be harmful to the safety of the victim/survivor, and anyone else protected by the Order.

**Usually a Protection Order cannot be made for more than 2 years.**

**However**, if there are special reasons, the court can extend the Order, BUT it cannot be extended beyond 3 years.

### **What happens when a Protection Order is not respected?**

It is an offence to refuse to respect a Protection Order

<b>Sentences</b>
<b>Imprisonment not exceeding 2 years or a fine not exceeding E3 000 fine; or both</b>
<b>Imprisonment not exceeding 5 years or a fine not exceeding E10 000; or both where more offences are committed</b>



## Other Issues in the Act

### Defences and Issues that May Affect Sentencing

#### **Relationship between the victim/ survivor and accused person (Section 151)**

Any relationship, previous or existing, shall not provide a defence to any offence under this Act

#### **Not Knowing the Age of the Victim/ Survivor (Section 152)**

A person accused cannot use as defence the lack of knowledge that the victim/survivor was a child (below the age of 18 years) at the time the offence took place.

The person can still be found guilty of the offence, but the court may look at this issue when it decides on the sentence to be given.

#### **Consent to the Crime (Section 153)**

Consent is not a defence to any offence under this Act

The only exception is in the case of indecent treatment of children (Section 36) and maintaining a sexual relationship with a child (Section 37) where both the victim/survivor and the accused person were under the age of 18 when the crime happened and both of them freely agreed to do the activities.

#### **Intoxication (Section 154)**

A person accused of an offence under this Act cannot use as a defence “being drunk” or intoxicated at the time the offence took place.

Intoxication (for example, being drunk) relates to a person’s physical or mental control being reduced as a result of taking any alcohol, or drugs.

### Protection of Witnesses

A court must take actions to protect victims/survivors and witnesses in cases under the Act (Section 159). In doing so, the court will look at issues such as the age, gender, health of the victim/survivor or witness.

**A court must take actions to protect victims/survivors and witnesses in cases under the Act (Section 159).**

**In doing so, the court will look at issues such as the age, gender, health of the victim/survivor or witness.**

The court must make sure that the actions it takes to protect victims/survivors and witnesses do not negatively affect the fairness of the trial and the rights of the accused.

### **Use of child-friendly Courts (Section 189)**

If a child has to give evidence, the court has to make sure that the place to be used as a court is set up in such a way as to make the child feel relaxed, and that the child cannot see or hear any person involved in the case that might upset the child.

### **Domestic Violence Courts (Section 126)**

The Act states that special Domestic Violence Courts will be set up to deal with domestic violence cases.

### **Limits on Publishing Information in SODV Act Cases (Section 194)**

No one, including a journalist or editor, is allowed to publish any information that will lead to people knowing the identity of the people involved in a case under this Act.

It is only the identity of the person accused of a crime under the Act that can be published, unless this will bring out the identities of the other people involved.

Publishing information that is not supposed to be published about the people involved in case under the Act is an offence.

#### **Sentences**

**Sentence:** A fine not exceeding E10 000 or Imprisonment not exceeding 2 years

The information is published by an **organisation, company or any other body**

**Sentence:** A fine not exceeding E50 000 fine.



## WHERE TO GET HELP

You can contact or go to any of the following places to get more information, report a case, or get help for any of the issues that are in the Act:

**1. Royal Eswatini Police Service (REPS)**

Police Emergency Line 999

Domestic Violence, Child Protection and Sexual Offences Unit  
(DCS) at any police station near you

**2. Ministry of Education and Training**

Hotline: 9664

**3. One Stop Centre**

Telephone: 2404 9880

**4. Swaziland Action Group Against Abuse (SWAGAA)**

Telephone: 2505 7514/Toll-Free Number: 951

U-Report: SWAGAA 8500

**5. Regional Social Welfare Offices**

**6. Cabrini Ministries**

Telephone: 2343 4494

**7. Super Buddies Club**

Telephone: 2404 8228