

# ***COVID-19 and human rights limitations: Taking public opinion into account***

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‘A glorious  
messiness’

Autocracy is certainly more predictable than democracy. Autocracy has none of the last-minute high-wire thrill of democratic politics. But the unpredictable nature of democracy is not least due to the fact that the citizen is its ultimate source of power. That’s why, after all, democracy is a *glorious* messiness - Open Democracy.org

# Rights

## 7. Rights

- (1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.
- (2) The state must respect, protect, promote and fulfil the rights in the Bill of Rights.
- (3) The rights in the Bill of Rights are subject to the limitations contained or referred to in section 36, or elsewhere in the Bill.



“Any restrictions on our rights need to be logical and transparent. If we don't see the point of them or they seem arbitrary (as is now the case) then it is difficult to distinguish which make sense (such as masks) from those which are nonsense (such as what clothes we can buy or buying cigarettes)”

**White woman, 45-54 years, Makana, EC**

“The ban on cigarette. It's very unfair for da government 2 expect ppl 2 stop smoking over night. And it's my right 2 smoke if I want 2. Da government is making us more poor by making us pay very high prices 4 black market cigarette ”

**Indian female, 25-34 years, Northdale, PMB, KZN:**



# Limitations

Rights may be limited in terms of section 36 of our Constitution, when such limitation would be deemed *reasonable and justifiable* in an open and democratic society.

Government action must be rational and proportional when limiting rights



# Weighing, balancing and public opinion

Regulations under lockdown affected individuals and groups disproportionately.

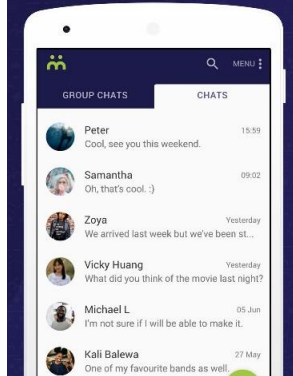
Weighing up competing interests and values may determine attitudes and perceptions, for instance the value placed on life and the common good versus the value placed on comfort and retention of privilege.

The protection of self and others may very well be values that outweigh freedom during a pandemic.

The public's views are not the *only* consideration to be considered, as the court held when abolishing the death penalty, but it is one of the factors that should be taken into account in a participatory democracy and weighed alongside other factors.

## #datafree messaging

No airtime? No worries!  
Always connected.



# Study Methodology

- The online survey was conducted using the #datafree Moya Messenger App and through links from social media adverts on Facebook and Twitter.
- The Moya Messenger app, which is operated by biNu, has 4 million users, 800,000 of whom use the app every day.
- The survey was available in six languages: English, isiZulu, isiXhosa, Setswana, Sesotho and Afrikaans.
  - Round 1 (13 Apr – 11 May; n=12,312)
  - Round 2 (3 Jul – 11 Sep; n=9,519)
  - Round 3 (29 Dec – 6 Jan; n=10,618 completed responses)



**stats sa**

Department:  
Statistics South Africa  
REPUBLIC OF SOUTH AFRICA

# Study Methodology

## Weighting approach

The data was benchmarked (weighted) to the distribution of South Africa's adult population.

The results were weighted by age, race, and education. StatsSA 2016 Community Survey population estimates for these three variables were used in this process.

This allows the data to be broadly generalisable to the country.





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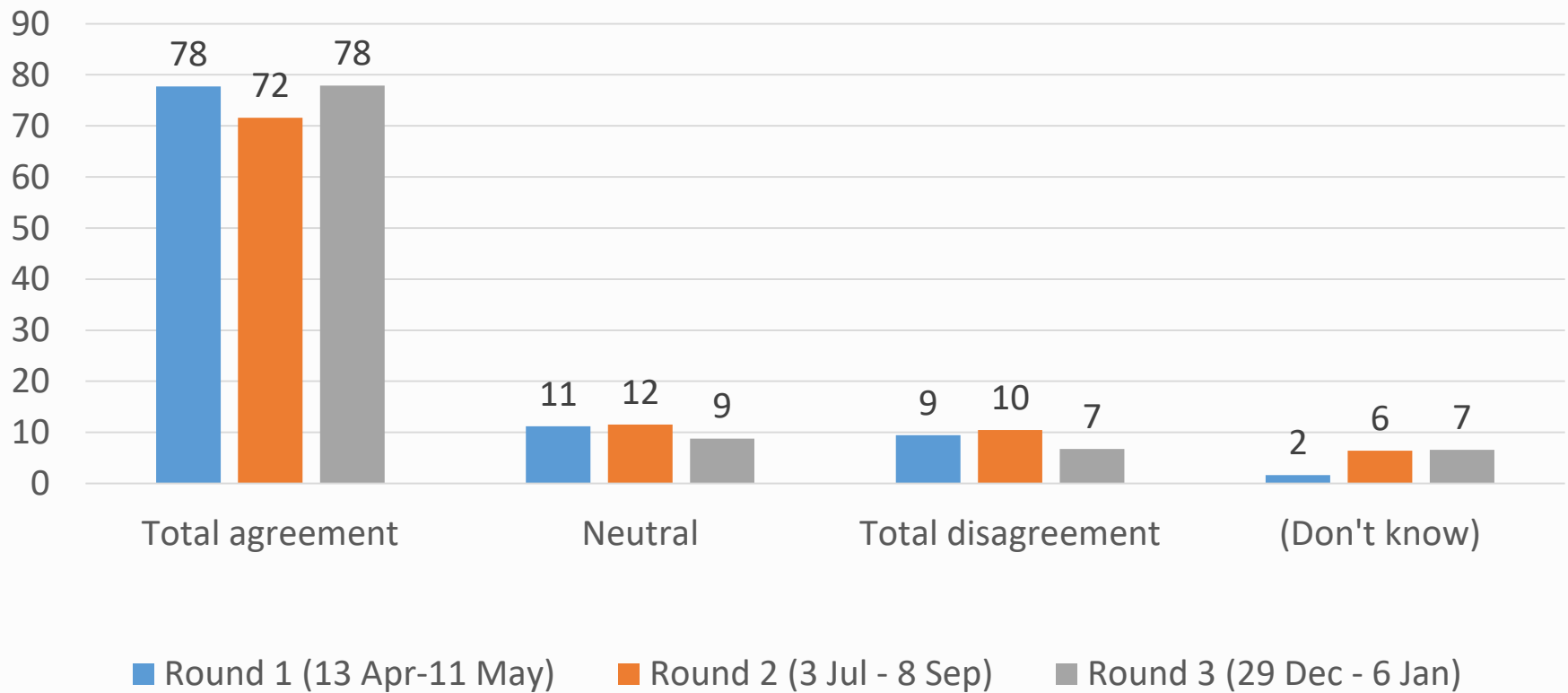
“I felt like I was locked up in jail in my own home and that's very bad since I have rights”

**Black African woman, 18-24 years,  
unemployed, City of Johannesburg,  
Gauteng**

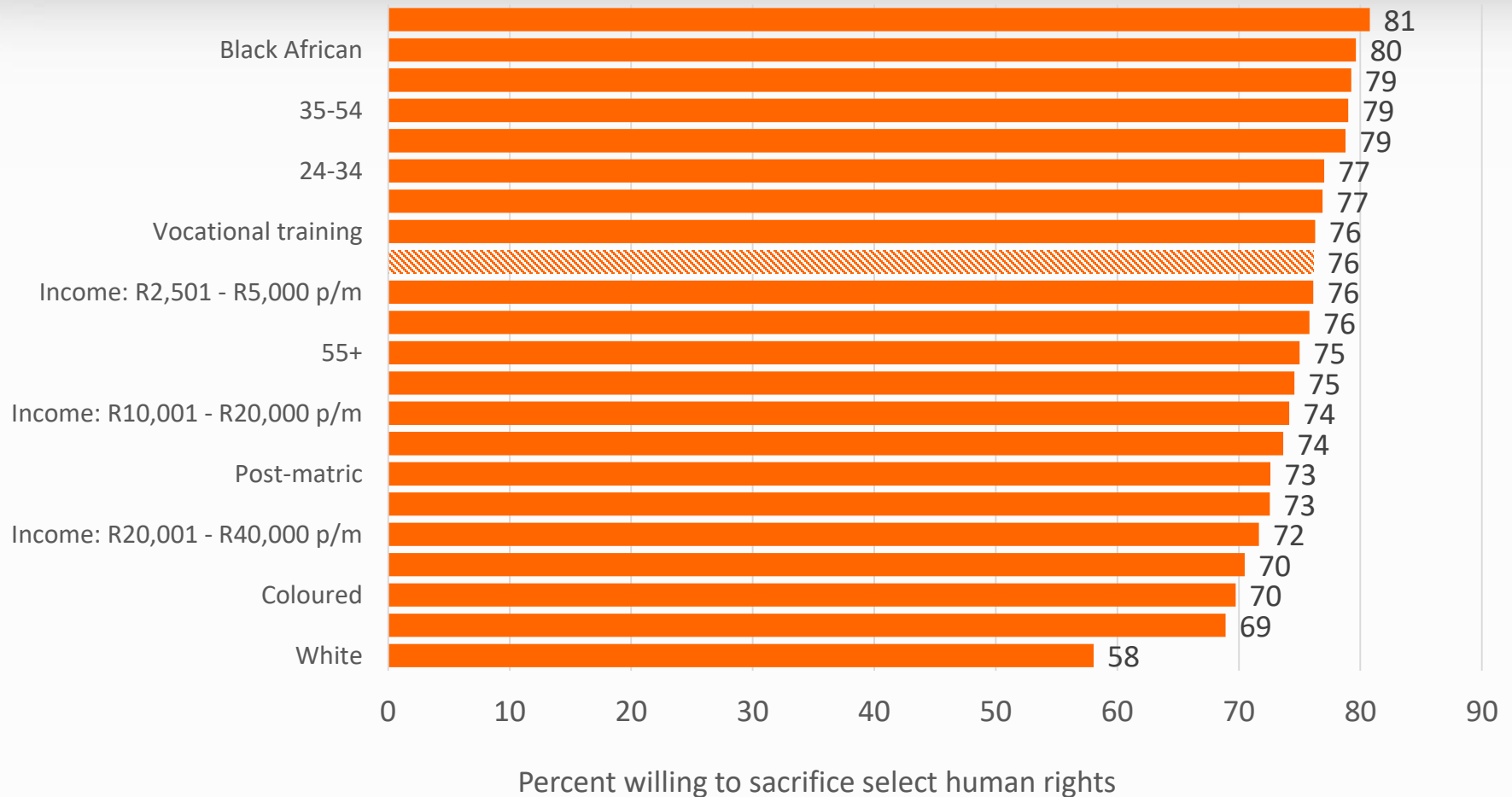


# Willingness to sacrifice human rights

Willingness to sacrifice select human rights to stop the spread of COVID-19 (%)



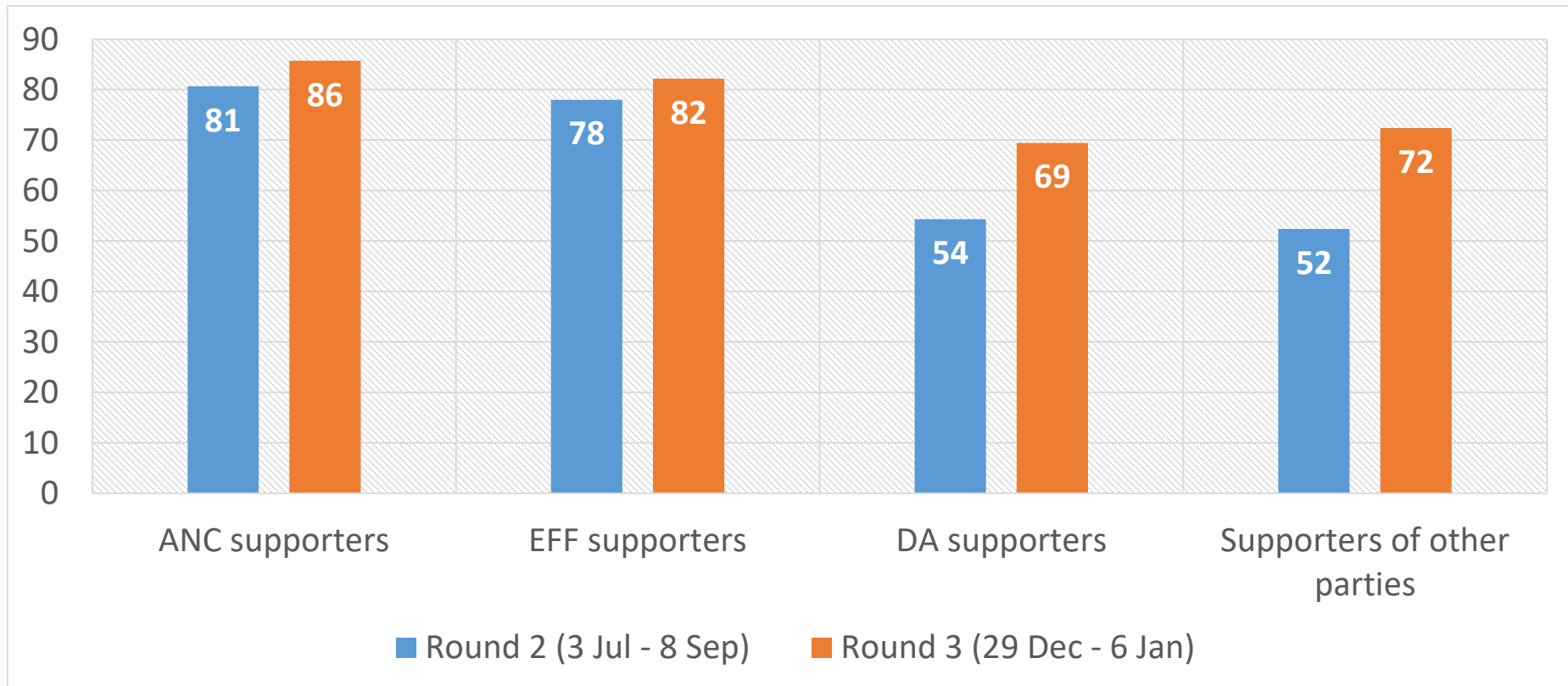
# Willingness to sacrifice human rights, by socio-demographic attributes



Note: The percentages refer to averages across all three survey rounds.

# Willingness to sacrifice rights, by political identification (Rounds 2 & 3)

- ANC and EFF supporters more willing than DA supporters to sacrifice human rights
- Generally increasing tendency between two rounds, with largest gains among DA supporters



# Forgoing which human rights?

- Combating COVID-19 does not require the suspension of all rights and freedoms.
- Obvious question: **which specific human rights** would South Africans be prepared to temporarily forego?
- In **Rounds 2 and 3** of the UJ/HSRC survey, respondents were provided with a **predefined list of six fundamental freedoms they might be willing to forgo** to stop the spread of the pandemic.
- **Results** suggest that **individuals had differentiated views** on which human rights they would sacrifice, with some more favoured than others.

Which of the following rights would you be willing to sacrifice? Please select all the options you are willing to sacrifice

Your right to go to your place of worship (church, mosque, synagogue, temple, etc.)

Your right to travel from place to place

Your right to attend school and university

Your right to be private and not share information with government

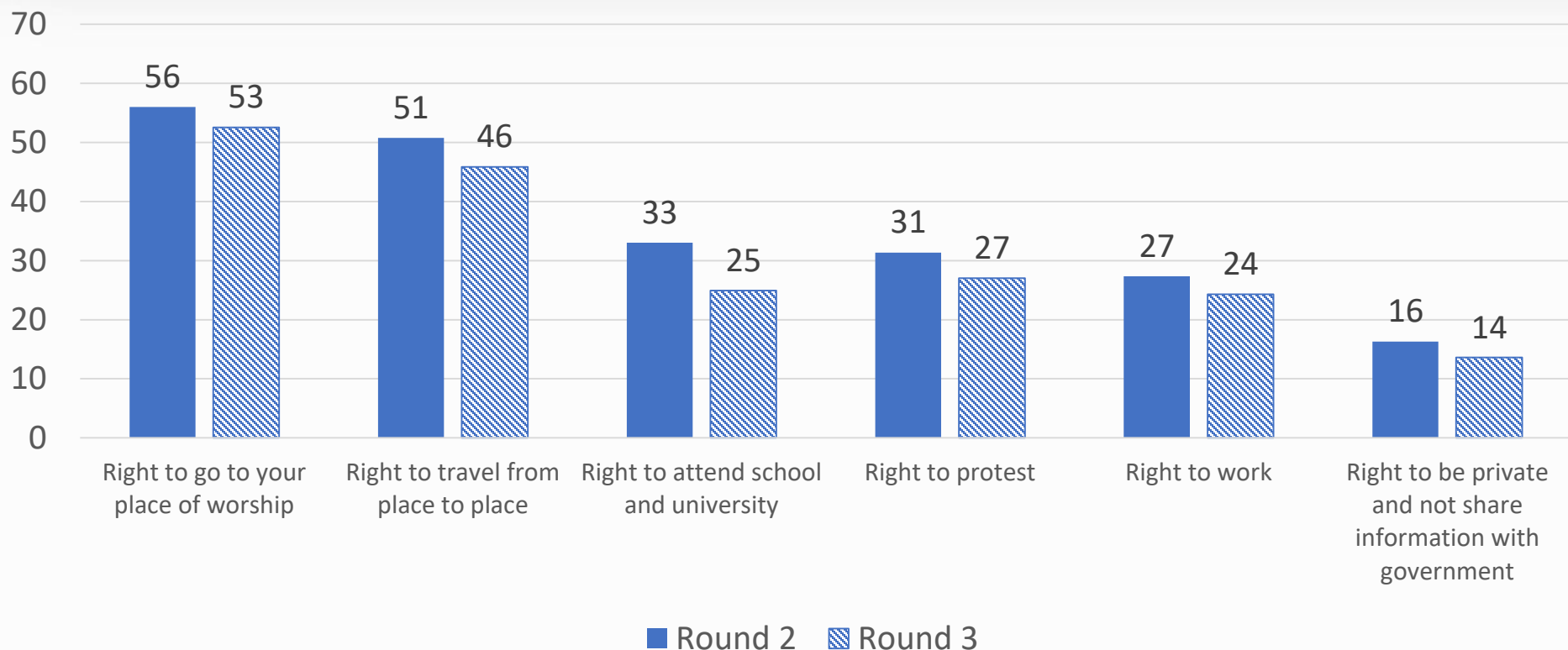
Your right to work

Your right to protest

You are not willing to sacrifice any of these rights

# Forgoing which human rights?

*Which of the following rights would you be willing to sacrifice? (%)*



Rank order of the six rights and freedoms remained unchanged across the two survey rounds, portraying a broad consistency in public preferences

# BILL OF RIGHTS



## Predictors of willingness to temporarily forego specific rights

- **Logistic regression analysis** was undertaken to examine the predictors of willingness to forego each of the six rights.
- **Common predictors** across 6 items were: confidence in president's handling of pandemic, income, and education
- **Social solidarity** had a weak effect, compared to the strong effect on general willingness to sacrifice.
- **COVID-19 outlook:** those who feel situation remain same / uncertain less likely to sacrifice religious assembly, education. No significant difference between those who feel the situation will improve and those who feel it will worsen.
- **Gender, age and race** have varied effects

# Pandemic fatigue

Reinvigorating the public to prevent COVID-19

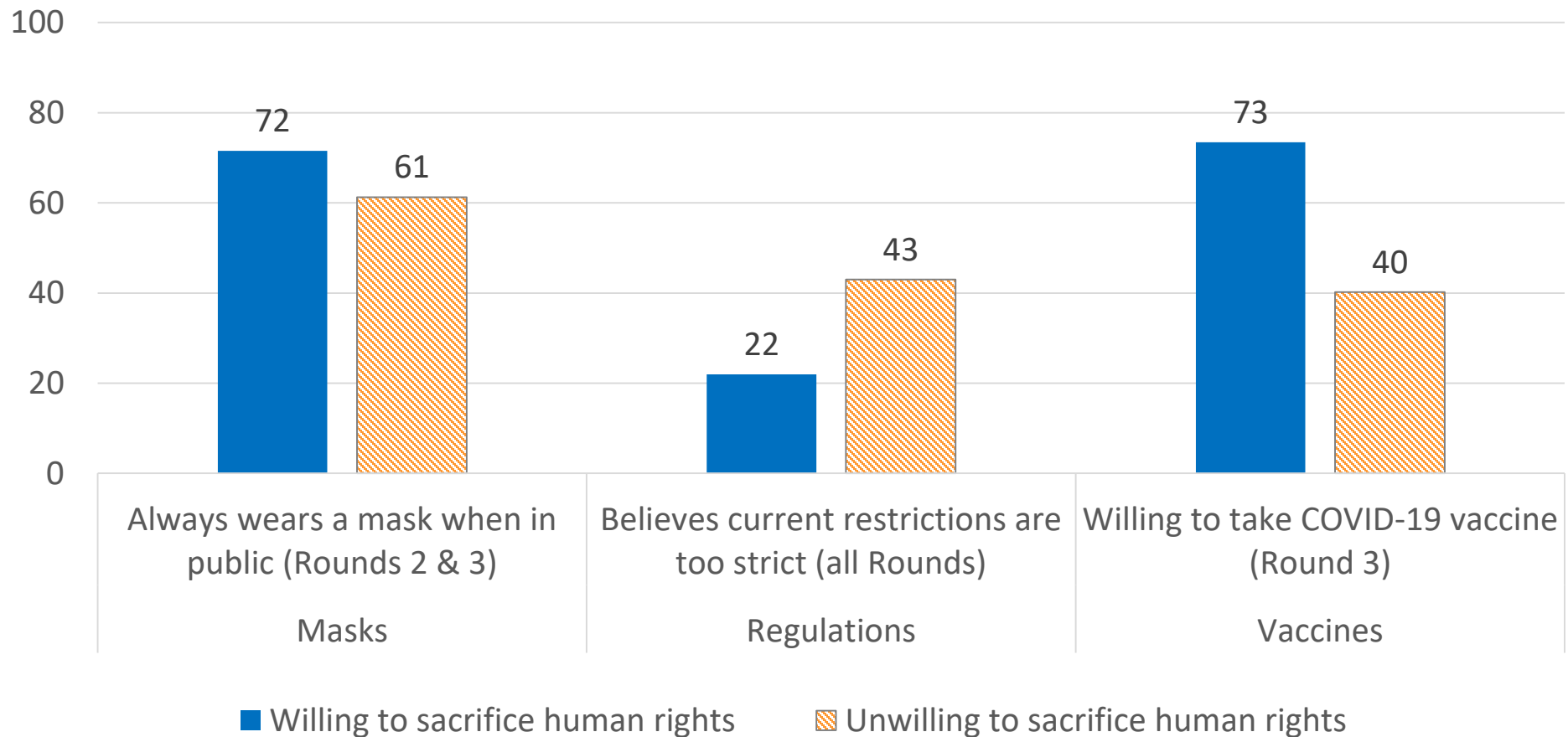


## Sacrifice, regulatory compliance and policy support

- Late 2020: mounting disquiet about signs of failure to adhere to COVID-19 preventative behaviours, (mask-wearing, mass gatherings, social distancing).
- Raised questions about the role of personal responsibility, and attention to pandemic 'fatigue'.
- As vaccination programmes roll out, emphasis remains on adherence to basic health promotion measures to minimise the size of future waves of the virus.
- Critically important that we understand the factors associated with compliance with COVID-19 regulations and protocols.
- Willingness to sacrifice select human rights happens to be one of these key factors.

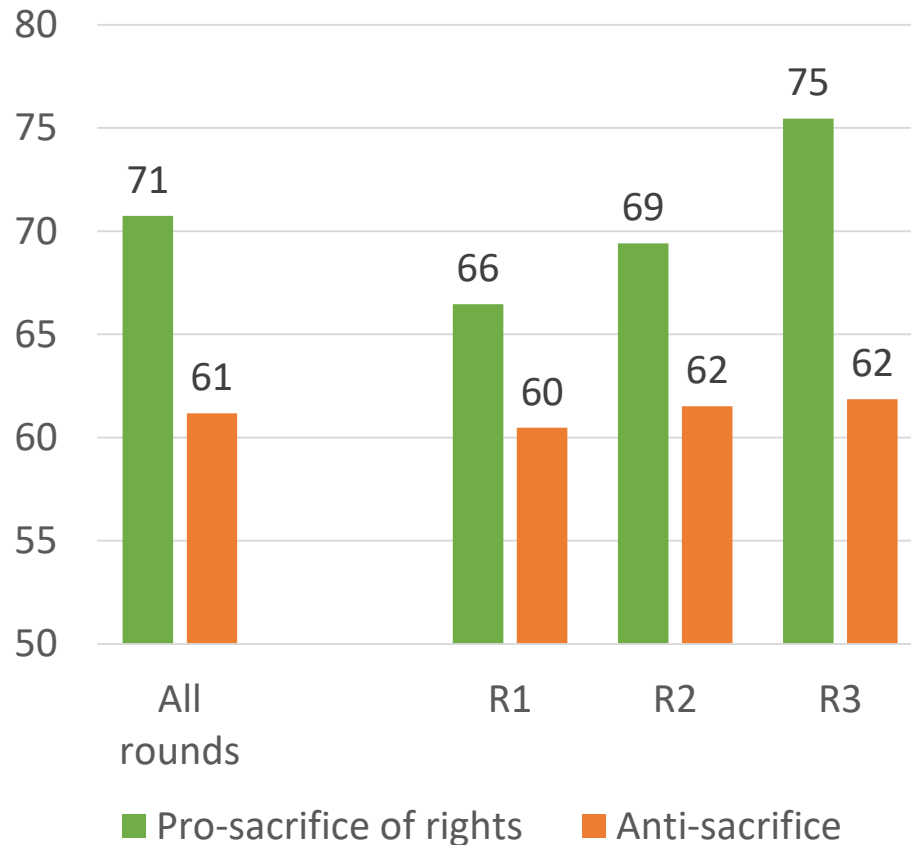


# Views on human rights sacrifice and compliance with COVID-19 measures



- Findings hold even when using multivariate analysis, controlling for socio-demographics

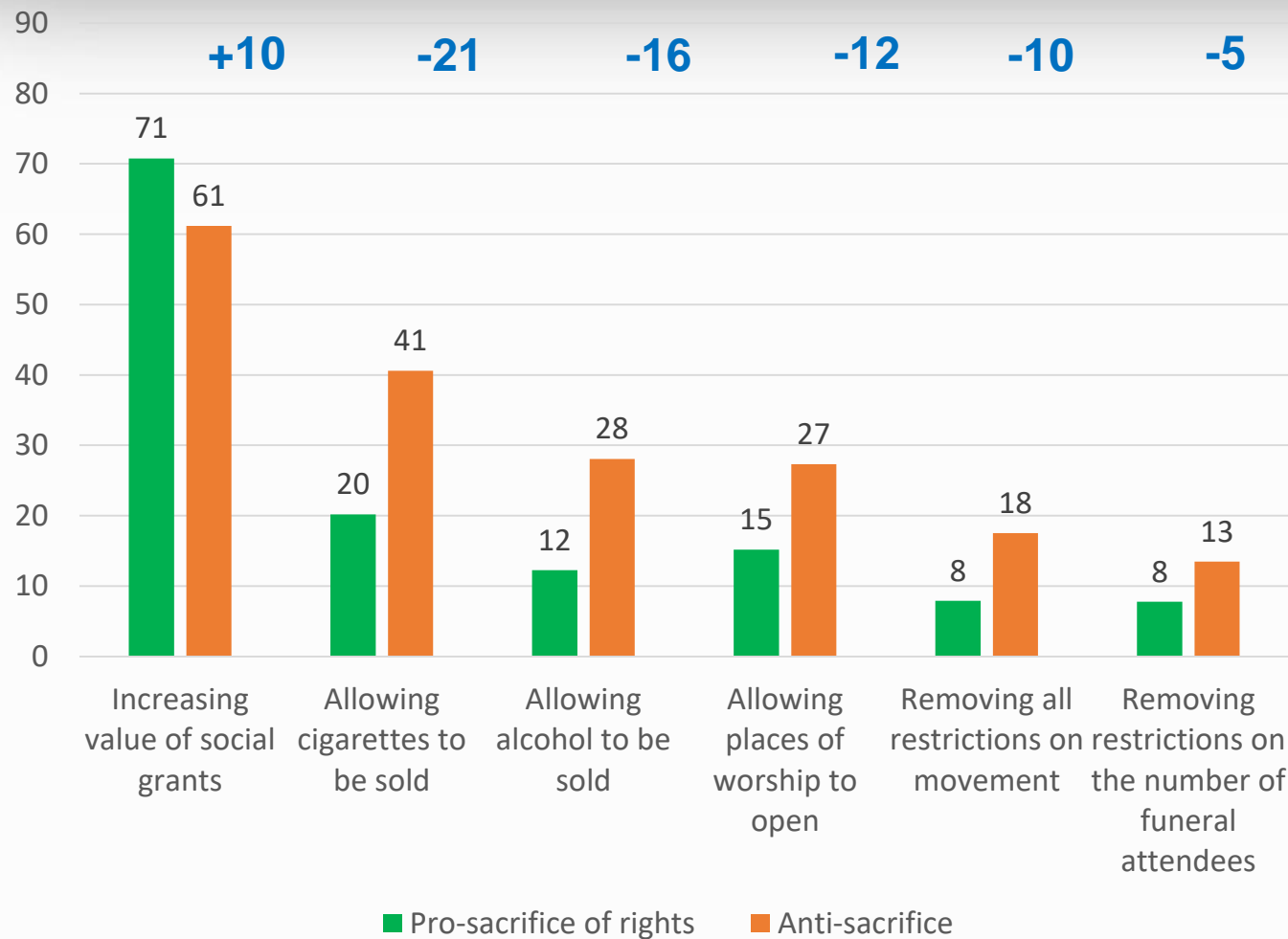
Increasing value of social grants to help poorer households, by survey round (%)



## Views on human rights sacrifice and policy preferences

- Those willing to sacrifice were more partial to increasing value of social grants than anti-sacrificers
- Gap in policy support has increased over time

# Views on human rights sacrifice and policy preferences



- Graph displays significant differences
- Biggest differences in terms of cigarette and alcohol bans
- Significant but smaller differences for increasing value of grants, opening up places of worship, removing restrictions on movement

## Celebrating solidarity while guarding against authoritarianism

- Public health emergencies place immense power in the hands of executive leadership: risk of tending towards authoritarianism.
- Our community has come together, making big and small sacrifices for the common good.
- But our willingness to accept sacrifice leaves us vulnerable to the threat of creeping authoritarianism
- Government measures mitigated the spread of COVID-19, saved lives, and allowed health facilities to prepare. These are admirable outcomes ... but with major consequences particularly for the economy.





COVID-19   
**LOCK  
DOWN**



## ***Policy Recommendations***

- **Participatory, inclusive and adaptive processes will be essential to maintaining support and adherence to regulations**

Participation has been advanced as a fundamental principle of human rights (UNAIDS, 2020). If trust and compliance are to be maintained, this will require openness, transparency and inclusive forms of decision-making, effective communication about why certain regulations are necessary and rational. Individuals, communities and stakeholders must have space to provide feedback and share views.

- **Regulations must be of limited duration, evidence-based, and reviewable**

As emphasised in the UN Siracusa Principles (1984), any limitations must be (a) temporary, (b) subject to review, and (c) must not discriminate unfairly. Blanket bans – such as that imposed on tobacco products – are arguably ineffective and deeply polarising, to the extent that they reduce confidence in government's handling of the pandemic.



# *Policy Recommendations*

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- **Independent oversight of government actions impacting on rights of society, communities and individuals.**

There is a need for active and continuous independent oversight by civil society, and accountability mechanisms, such as Chapter 9 Institutions (notably the SAHRC) and the courts, to address unconstitutional or unlawful conduct and, where necessary, challenge regulations on the grounds of rationality and their impact on fundamental human rights. This has largely been the case in South Africa and, as such, any authoritarian tendencies have been kept in check. This should continue as South Africa's response to COVID-19 has mostly respected the rule of law, but whether it ultimately comes out on the right or wrong side of human rights remains to be seen (Heywood, 2020).

“If combating Covid-19 is a war, we can be proud of why we got into the fight: to preserve life, especially for vulnerable people. Those are the best of our values. We must now ensure those same values guide how we fight. At times, this won’t be easy. But our unbreakable commitment to human rights will make our sacrifices more bearable, and will be vital as we rebuild after the war is won.”

~ **Edward Santow, Australia’s human rights commissioner**

THANK YOU

COVID-19 &  
HUMAN RIGHTS

