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# Protection of human rights in South Africa: public awareness and perceptions

## Summary

South Africa is a new democracy with a progressive Constitution and a Bill of Rights that contains all human rights that are universally accepted and recognized. The purpose of this article is to analyse the results of a research study aimed at determining the level of public awareness and the perceptions regarding the protection and enjoyment of such rights. To that end, the survey sought information on public knowledge or awareness of the Bill of Rights, violation or protection of various types of rights, and awareness and perceptions regarding human rights institutions. It was found that many South Africans are unaware of the existence of the Bill of Rights and that the majority of South Africans blame the government for most human rights violations. The results of the survey also show that people are not happy with the level of protection of their rights, particularly socio-economic rights. It is also clear that public knowledge of the existence of human rights institutions and the work they do is severely limited. It is concluded that there is a serious need to educate the public, not only on the Bill of Rights and the processes and the mechanisms of its enforcement, but also on the existence and functions of the various human rights institutions. Only then will the Bill of Rights serve the true purpose for which it was intended.

## Beskerming van menseregte in Suid-Afrika: openbare bewustheid en persepsies

Suid-Afrika is 'n nuwe demokrasie met 'n progressiewe Grondwet en 'n Handves van Regte wat al die menseregte bevat wat universeel aanvaar en erken word. Die doel van hierdie artikel is om die resultate te analiseer van 'n studie wat beoog om die vlak van openbare bewustheid en die persepsies aangaande die beskerming en die benutting van sulke regte vas te stel. Om dit te kan doen, het die opname inligting ingesamel oor die publiek se kennis of bewustheid van die Handves van Regte, oortreding of beskerming van verskillende tipe regte, en bewustheid en persepsies aangaande menseregte-instellings. Daar is bevind dat baie Suid-Afrikaners onbewus is van die bestaan van die Handves van Regte en dat die meerderheid die regering blameer vir skendings daarvan. Die resultate van die opname wys ook dat mense nie gelukkig voel met die vlak van beskerming van hulle regte nie, veral ten opsigte van sosio-ekonomiese regte. Dit is ook duidelik dat openbare kennis aangaande die bestaan van menseregte instellings en die werk wat hulle doen, beperk is. Daar word tot die slotsom gekom dat daar 'n ernstige behoefte is om die publiek op te voed, nie net oor die Handves van Regte en sy bestaan, funksies en meganismes van afdwingbaarheid nie, maar ook op die bestaan en funksies van die verskeie menseregte-instellings. Slegs dan sal die Handves van Regte die ware doel waarvoor dit ontwerp was, dien.

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## 1. Introduction

In order to understand the protection of human rights in South Africa, one has to take into account the nature of the country as a transitional society. Transitional societies may be described as those societies emerging from past repressive regimes. Such societies usually have a history of autocratic dictatorships, *apartheid*, periods of conflict, or foreign domination. Respect for human rights is hitherto unknown or disregarded and hence the people in those societies would have had to cope with a legacy of human rights abuses. South Africa is a typical example of a transitional society. It is a society that has just emerged from a long period of *apartheid* and colonial domination. That period was mainly characterized by gross human rights abuses and institutionalized discrimination.

All this was to change in the early 1990's. This period was characterized by a series of events which culminated in a new political order and a new constitutional dispensation. The high watermark of these developments was the enactment of the interim Constitution<sup>1</sup> that was adopted by parliament in December 1993 and came into force in April 1994. One of the most outstanding features of this Constitution was that it contained a Bill of Rights.<sup>2</sup> Another important feature was that it made provision for the drafting and adoption of a new and final Constitution. The outcome of this process was the 1996 Constitution,<sup>3</sup> which came into operation in February 1997. This new Constitution also contains a Bill of Rights substantially carried over from its predecessor. This Bill of Rights<sup>4</sup> contains all the categories of human rights that are ordinarily included in most international human rights instruments. Among these are the first generation rights (which include the traditional civil and political rights) and the rather controversial second and third generation rights (which include social, economic and cultural rights).

Quite apart from being a transitional society, South Africa is a society of unprecedented diversity. Such diversity manifests itself in terms of race, colour, gender, language, ethnicity, religion, culture and disability. Protecting human rights in such a society is an enormous challenge. South Africa seems to have lived up to the challenge by enacting a Bill of Rights that takes into account the unique history and the diverse nature of the society. Indeed, the South African Bill of Rights is one of the most progressive in the world as it contains all categories of human rights that are universally recognized and accepted. It is submitted, however, that providing for such rights is one thing and protecting or implementing them effectively is another. The question therefore, is, firstly, whether such rights are actually implemented in practice and, secondly, to what extent South Africans actually enjoy and realize the human rights protection accorded to them by the Constitution.

There is no doubt that in order to enjoy any rights one has to have knowledge of such rights. One cannot enjoy or enforce rights that one is not

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1 Act 200/1993.

2 Chapter 3.

3 Act 108/1996.

4 Chapter 2.

aware of. It goes without saying therefore, that the effective enjoyment or enforcement of human rights largely depends on the level of public awareness of such rights and on the mechanisms and institutions through which to enforce them. The purpose of this article is to analyse the results of a survey conducted for the purpose of determining the level of public awareness of human rights in South Africa and the public perceptions towards such rights. The conclusions drawn from the analysis will provide an indication of whether South Africans have been able to activate human rights in the face of diversity and whether human rights in South Africa are sufficiently implemented and enjoyed in actual practice.

## 2. The CASE surveys

Several international organizations, such as Human Rights Watch and Amnesty International have conducted a number of human rights surveys in South Africa for various reasons and with various objectives.<sup>5</sup> Local institutions and organizations including the South African Human Rights Commission (SAHRC), the Human Sciences Research Council (HSRC) and the National Institute for Public Interest Law and Research (NIPILAR) have done the same.<sup>6</sup> One such survey was commissioned by the Human Sciences Research Council and conducted by the Community Agency for Social Enquiry (CASE) in 1998.<sup>7</sup> The survey was intended to determine “the state of realization of human rights in South Africa, and in particular, rights in the areas of the environment, housing, health, food, water, social security, and education”.<sup>8</sup> The survey was conducted within the framework of the South African Human Rights Commission’s constitutional obligation to monitor the observance of human rights in the country.

Among other things, the CASE research assessed the knowledge of human rights among the general public and specified target groups namely children, prisoners, refugees, disabled people, people with HIV/AIDS and dispossessed people. The researchers found that only about 30% of the respondents were aware of the Bill of Rights (38% of men and 23% of women).<sup>9</sup> This knowledge was more common among Whites (54%) than among Indians (47%), Coloureds (37%) and Africans (24%).<sup>10</sup> The researchers observed that there was a need to educate the population about the specific provisions contained in the Bill of Rights. They recommended an information dissemination campaign to educate people (especially disadvantaged communities) about their rights, and about the mechanisms to access them.

A similar survey was commissioned by the National Institute for Public Interest Law and Research (NIPILAR) and it was also conducted by the

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5 See for example, Human Rights Watch World Report 2001, South Africa. See also Amnesty International Report 2003 (South Africa).

6 See for example the SAHRC reports on economic and social rights, 1997-2002.

7 Community Agency for Social Enquiry (CASE) 1998.

8 Community Agency for Social Enquiry (CASE) 1998.

9 Community Agency for Social Enquiry (CASE) 1998.

10 Community Agency for Social Enquiry (CASE) 1998.

Community Agency for Social Enquiry (CASE) in 2000.<sup>11</sup> The survey was aimed at determining the level of public awareness of human rights and human rights institutions. To that end the research dealt with the following four main aspects: knowledge of the Bill of Rights; perceptions regarding human rights violations; knowledge of the existence and role of human rights institutions; and opinions and attitudes regarding various rights-related issues.

The research found that 36% of the respondents had never heard of the Bill of Rights while an additional 20% had heard about it but did not know what its purpose was.<sup>12</sup> Regarding violations of human rights, the research found that the workplace and race relations were the contexts within which human rights were mainly violated. As far as human rights institutions were concerned, it was found that knowledge of their existence, purpose and activities was limited. The study concluded that much educational work needed to be done, including dissemination of information about the Bill of Rights, its specific provisions, and other human and social-economic rights. It also concluded that a campaign to advertise mechanisms and institutions dealing with human rights violations needed to be put in place. Such a campaign had to be accompanied by an attempt to compile information about the capacity and specific areas of focus of various human rights organizations at national and provincial levels.<sup>13</sup>

A number of observations can be made about the above-mentioned two CASE surveys. The 1998 survey was too broad and general. It tested public perceptions on broad issues such as the general living conditions of people in South Africa, new development projects, the environment, housing, health, food, water, social security and education. In the particular context of human rights therefore, the survey focused only on socio-economic rights. Although the 2000 CASE survey was more human rights specific, it also adopted a broad approach and consequently admitted in its report that “the wide range of issues covered in this report makes it difficult to draw overall conclusions”.<sup>14</sup> It should also be noted that both surveys based their findings on stratification of the sample mainly by province (per the nine provinces in the country) and by race (Whites, Africans, Indians and Coloureds).

It is not the intention of this work to criticize the CASE surveys, but rather to distinguish them from a survey carried out for purposes of this particular study. There is also the element of time. Levels of public awareness change over time. So too do public perceptions. The CASE surveys were conducted in 1998 and 2000 respectively. A lot of water has since passed under the bridge and with it new developments have floated past. Furthermore, comparison is an important component of research. According to Bernard, it is important “...because you can make direct comparisons across cases and look for generalizations”.<sup>15</sup> It is against this background that the author conducted a new survey; a discussion and analysis of which we now turn to.

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11 Community Agency for Social Enquiry (CASE) 2000.

12 Community Agency for Social Enquiry (CASE) 2000.

13 Community Agency for Social Enquiry (CASE) 2000.

14 Community Agency for Social Enquiry (CASE) 2000.

15 Bernard 2000:386.

### 3 A new survey<sup>16</sup>

#### 3.1 Methodology

In January-February 2003 a research investigation was conducted to determine the level of public awareness and perceptions regarding the protection of constitutional rights in South Africa. The methodology adopted involved the distribution of questionnaires in two rural areas and one urban area.<sup>17</sup> The two rural areas chosen were Mvenyane in the uMzimvubu district municipality and Ritvlei in the Umzimukulu district, both in the Eastern Cape province. In these areas questionnaires were distributed randomly among respondents from several households. The urban areas chosen were several residential parts of Durban city. These included Westville, Shalcross, Umlazi and Durban North. The respondents in these areas included factory workers, students and ordinary people chosen randomly from various households. The choice of the research areas was based mainly on the urban/rural contrast.

In all, 2000 questionnaires were distributed and administered by the researcher with the help of a few trained assistants. Half of the questionnaires (1000) were distributed in the Durban areas and the other half in Mvenyane (500) and Rietvlei (500). The questions were divided into three categories:

- 1) Those based on the awareness and perceptions regarding the Bill of Rights in the Constitution;
- 2) Those based on awareness and perceptions regarding human rights violations on one hand and protection on the other; and
- 3) Those based on knowledge and perceptions regarding certain human rights institutions established by the Constitution.

In keeping with the constitutional language requirements<sup>18</sup> and to ensure that the respondents understood the questions, the questionnaires were drafted in three official languages. Those distributed in Durban were mainly in English while those destined for Mvenyane and Rietvlei were in Xhosa and Zulu respectively. For purposes of simplicity some of the questions were of a “yes” and “no” nature while others were based on multiple choice from given alternatives.

The advantages of using questionnaires in a study of this nature, are quite obvious. First of all, with questionnaires the researcher is able to reach respondents in distant places, but more importantly, questionnaires are an excellent way of dispassionately tackling questions dealing with perceptions, attitudes and representativeness. Moreover, questionnaires “are the only realistic way of taking the pulses of hundreds or thousands of people”.<sup>19</sup>

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16 The author is grateful to the National Research Foundation (NRF) for providing the generous funding that enabled me to conduct this research.

17 See annexure to the questionnaire.

18 Section 6(1) of the Constitution provides for 11 official languages and section 30 provides for *inter alia*, the right to use the language of one's choice.

19 Bickman and Rog 1998:485.

Obviously there are certain disadvantages associated with the use of questionnaires including misrepresentations and misinterpretations. Many respondents may not take the questionnaires seriously, answering as they think they should in order to portray or conform to a particular image. The researcher usually has no control over such responses other than to take cognizance of such shortcomings in interpreting the data.

A total of 1512 respondents (a response rate of more than 75%) from all the research areas (both urban and rural) answered the questionnaires properly. 803 of the respondents (53.1%) were from the urban areas while 709 (46.9%) were from the rural areas. 981 respondents (64.9%) were below the age of 30 years and 482 (31.9%) were above the age of 30 years. 49 respondents (3.2%) did not indicate their age. As far as gender balance is concerned, 710 respondents (47%) were male while 766 (50.7%) were female. 36 respondents (2.4%) did not indicate their sex. The choice of respondents cut across the racial divide. Race, as already indicated, was not meant to be a factor in the stratification of the sample. For obvious reasons, however, the respondents in the rural areas were predominantly black.

## 3.2 Awareness and perception regarding the Bill of Rights in the Constitution

### 3.2.1 Awareness of the Bill of Rights

*Ignorantia iuris neminem excusat* (ignorance of the law is no excuse) and "everybody is presumed to know the law" are two common legal maxims. The idea behind these maxims is that all people are expected to have knowledge of the law so as to safeguard themselves and to protect and enforce their rights. Accordingly, the first question of the survey was whether the respondents had heard of the Bill of Rights in the Constitution. 33.2% of the respondents said they had never heard of the Bill of Rights while 66.8% said they had. This means that one-third of the respondents were unaware of the existence of the Bill of Rights. There are a number of observations to be made regarding the responses to this question. Firstly, the percentage of respondents who have heard of the Bill of Rights in this survey (66.8%) is almost the same as that of the 2000 CASE survey (64%). No conclusion will be drawn from this startling similarity at this point in time. Secondly, awareness of the Bill of Rights was more prevalent in the urban areas (42.9%) than in the rural areas (23.9%). This was not quite unexpected. And thirdly, in terms of gender, both females and males have a fairly equal level of awareness of the Bill of Rights (34% and 32% respectively).

### 3.2.2 Who is protected?

Since 1994 there has been a steady flow of immigrants (both legal and illegal) into South Africa, especially from neighbouring and other African countries. This has steadily given rise to feelings of xenophobia among many South Africans. In 1997, the South African Human Rights Commission (SAHRC)

identified xenophobia as a major source of concern to human rights and democracy in the country.<sup>20</sup> In 1998 the SAHRC launched a campaign known as the Roll Back Xenophobia Campaign with the aim of sending the strong message that irrational prejudice and hostility towards non-nationals were not acceptable under any circumstances.<sup>21</sup>

It is against this background that the survey sought to establish whether the respondents thought that the Bill of Rights protected only South African citizens or all people living in South Africa. 59.1% of the respondents thought the Bill of Rights protected all people living in South Africa, 24% thought it only protected South African citizens and 16.9% said they did not know. Again the urban respondents were more knowledgeable on this issue than their rural counterparts, with 32.6% of the former responding that the Bill of Rights protected all people living in South Africa, compared to 26.5% of the latter. As far as age groups are concerned, 38.4% of the under-30s thought the Bill of Rights protected all persons living in South Africa while only 20.2% of the over-30 age group thought the same. The male and female responses were fairly balanced, with 28.6% and 30.2% (respectively) responding that the Bill of Rights protected all people living in the country.

### 3.2.3 Has the government done enough to make people aware of the Bill of Rights?

The final question regarding the awareness and knowledge of the Bill of Rights was whether the respondents thought the government had done enough to make all people aware of the existence of the Bill of Rights in the Constitution. Just under a quarter of the respondents (24.9%) answered in the affirmative while an overwhelming 57.4% indicated that the government had not done enough. 17.6% said they did not know. The main disparity here was between the age groups (39.7% and 17.9% respectively responding in the negative). Again the males and females (28.6% and 30.2%) were fairly balanced in their negative response.

## 3.3 Human rights violations/protection

### 3.3.1 Where are human rights violated most?

The first question in this category sought to establish public perceptions regarding the places where human rights are violated most. Many respondents thought that most human rights violations took place in the workplace (24%), in the rural areas (24%) and at home (20%). A few respondents said most human rights violations took place in schools (9.4%) and in urban areas (11.9%). 10.6% did not know. More rural respondents thought that most human rights violations took place at home (15.7% as compared to 4.3% of the urban respondents

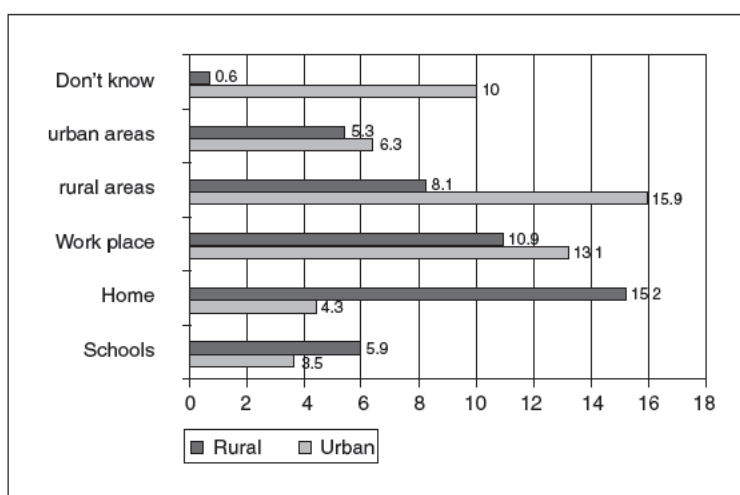
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20 Crush <<http://www.queensu.ca/camp/publications/policyseries/policy22.htm>> 08/03/ 2003.

21 Crush <<http://www.queensu.ca/camp/publications/policyseries/policy22.htm>> 08/03/ 2003.

who thought likewise). Interestingly, more urban respondents (15.9%) thought human rights were mostly violated in rural areas while only 8.1% of rural respondents thought likewise. Predictably, more youths thought human rights were mostly violated in schools (6.1%) as compared to the older folk (3.4%). It is, however, interesting to note that 18.6% of the under-30s thought human rights were mostly violated in rural areas, compared to 5.1% of the over-30s who thought the same. The responses in terms of urban/rural variations are illustrated in the following graph:

Fig. 1: Graph showing percentage distribution of perceptions regarding where human rights are violated most

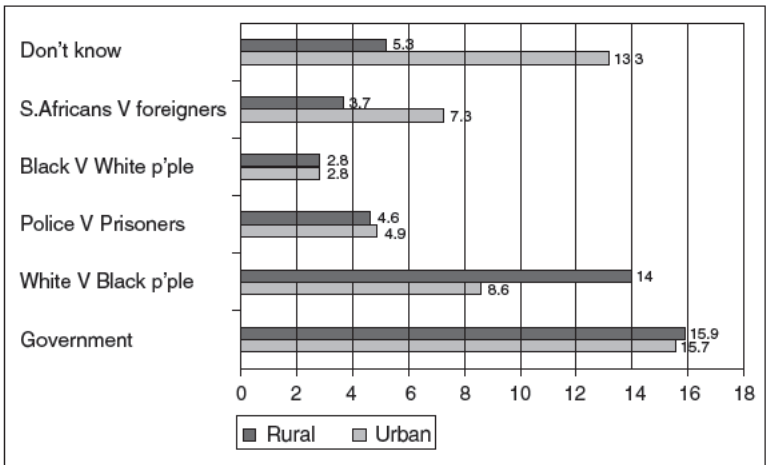


### 3.3.2 Who violates human rights most?

Section 8 of the Constitution provides for both the vertical and horizontal application of the Bill of Rights. In that context, respondents were asked who they thought violated human rights most. A clear majority (32%) responded that most human rights violations were committed by the government against its citizens. 22.4% thought that the main culprits of human rights violations were whites against blacks; 6.7% said it was blacks against whites; 9.4% said it was the police against suspects and prisoners whereas 11% indicated it was South Africans against foreigners. 18.6% did not know. Variations in terms of area (urban/rural), are depicted in the following graph:



Fig. 2: Graph showing percentage distribution of perceptions regarding who violated human rights most, according to area type



It is clear from the above statistics that, according to the survey, the main culprits of human rights violations are the government against its citizens and white people against black people. These responses are obviously formed by the history of the country, which was characterized by abuse of government power and racial disparities and prejudices.

### 3.3.3 Main causes of human rights violations

When respondents were asked what they thought was the main cause of human rights violations in the country, one third (33.8%) said it was racism, 27.3% thought it was lack of access to basic social services, 28.5% thought it was social and economic inequalities and 10.4% said it was neither of the three. There were no significant variations in the responses on the basis of gender (male / female). It should however be noted that more young people (24.4% out of 34%) thought racism was the main cause of human rights violations, more rural respondents (17.5% out of 27.3%) thought it was lack of access to basic social services, and more urban respondents (20% out of 28.4%) said it was due to social and economic inequalities. These responses are illustrated in the following tables:

Table 1: Percentage distribution of the perceptions regarding the main causes of human rights violations according to area type

Main causes	Main causes of human rights violations (%)		
	Urban	Rural	All
Racism	17.8	16.0	33.8
Lack of access to social services	9.8	17.5	27.3
Social and economic inequalities	20.0	8.5	28.5
None of the above	6.1	4.3	10.4
Total	53.7	46.3	100

Table 2: Percentage distribution of the perceptions regarding the main causes of human rights violations according to age

Main causes	Perceptions regarding main causes of human rights violations (%)		
	Age<30	Age>30	Total
Racism	24.4	9.6	34.0
Lack of access to social services	17.0	10.1	27.1
Social and economic inequalities	20.6	7.7	28.3
None of the above	5.6	5.0	10.6
Total	67.6	32.4	100

### 3.3.4 The right to life and the death penalty

In South Africa, as in many other countries, the right to life is perceived as the most fundamental of all human rights and it is seen as the most important and the source of all other human rights.<sup>22</sup> The right to life raises several contentious issues, including the death penalty, which is a source of an emotive and furious debate in South Africa. A question was put to the respondents as to whether the Constitutional Court's decision to outlaw the death penalty was a good thing, and predictably a significant majority (57.1%) said it was not, indicating a significant support for the death penalty. 31.1% of the respondents said it was a good thing, while 11.8% said they did not know. Several observations may be made about the responses regarding this issue. Firstly, the percentage of the urban respondents who did not support the death penalty (28.3%) was almost the same as that of their rural counterparts (28.5%). Secondly, more youths (36.5%) were opposed to the death penalty than were the older people (21%). And thirdly, more females (31.9%) than males (25.2%) were against capital punishment. It is clear from the responses that many South Africans would wish to have the death penalty back.

### 3.3.5 Political rights

The Constitution provides for political rights.<sup>23</sup> One of the elements of that provision is the right of all citizens to vote and elect their leaders in free and fair elections. There is no doubt that the observance and protection of this right lies at the heart of every democratic society. It is therefore surprising that when asked whether the leaders in the respondents' various areas were properly elected through the will of the people, a significant majority of 40% answered in the negative. It is even more surprising that almost a quarter of the respondents (24.4%) said they did not know. Only 35.7% of all the respondents thought their leaders were properly elected through the will of the people. Also surprising is the fact that more youths (25.2%) thought their leaders

<sup>22</sup> The right to life is guaranteed under section 11 of the South African Constitution. In *S v Makwanyane and Another* 1995 (3) SA 391 (CC), the Constitutional Court described the rights to life and dignity as "the most important of all human rights and the source of all personal rights in [the Bill of Rights chapter] (Paragraph 144).

<sup>23</sup> Section 19.

were not properly elected, compared to only 14.8% of their elders who thought likewise. Regarding the rural/urban contrast, more rural dwellers (23.8%) thought their leaders were not properly elected, compared to the urban respondents (16.1%) who thought the same. Yet again the male/female differentiation was fairly balanced (18.6% and 21.3%, respectively).

### 3.3.6 Prisoners' rights

The next series of questions related to the rights of prisoners<sup>24</sup> and the respondents' opinions thereof. Firstly, asked whether prisoners should be treated with dignity,<sup>25</sup> many respondents (54%) thought that they should not, 33.6% thought they should and 12.4% said they didn't know. Secondly, and rather interestingly, 58.6% of the respondents thought that prisoners should be allowed to vote during elections, 33.9% thought they should not and 7.5% said they did not know. Understandably, most support for prisoners' rights came from the youth, with 24.4% of the 33.6% that supported the rights of prisoners to dignity being persons under 30 years of age. Out of the 58.6% of the respondents who supported the right of prisoners to vote, 42% were in the same age category. More urban respondents (21% out of 33.9%) also supported the right of prisoners to dignity, compared to the rural respondents (12.8%) who thought otherwise. The males and females were, not surprisingly, balanced in their responses towards both questions.

The respondents were then asked if they thought that the Constitution provides too much protection for suspects and prisoners. More than half of the respondents (53.3%) replied in the affirmative, slightly over a quarter (26.8%) replied in the negative and 20.1% said they did not know. These statistics, including the rural/urban and gender balance in responses, are illustrated in the following tables:

Table 3: Percentage distribution of the responses regarding constitutional protection of suspects and prisoners, according to area type

Perceptions	Constitutional protection for suspects and prisoners (%)		
	Urban	Rural	Total
Too much protection	29.6	23.0	52.7
Not too much protection	14.1	13.1	27.2
Don't know	9.7	10.4	20.1
Total	53.5	46.5	100

24 The rights of arrested, detained and accused persons are laid down in section 35 of the Constitution. The word "prisoners" is used here as a generic term for all the categories.

25 As provided for under section 35(2)(e).

Table 4: Percentage distribution of responses regarding constitutional protection for suspects and prisoners, according to age

Perceptions	Constitutional protection for suspects and prisoners (%)		
	Age<30	Age>30	Total
Too much protection	35.2	18.2	53.3
Not too much protection	18.6	8.1	26.8
Don't know	13.6	6.3	19.9
Total	67.5	32.5	100

Table 5: Percentage distribution of responses regarding constitutional protection of suspects and prisoners, according to gender

Perceptions	Constitutional protection for suspects and prisoners (%)		
	Male	Female	Total
Too much protection	24.5	28.5	53.1
Not too much protection	14.4	12.5	26.9
Don't know	9.1	11.0	20.1
Total	48.0	52.0	100

It is clear that many South Africans think that suspects and prisoners enjoy too much constitutional protection. This kind of thinking is understandable considering that crime levels in the country are very high and many believe that the kid-glove approach with which suspects and prisoners are treated is a contributory factor.

### 3.3.7 The right to equality

It was mentioned earlier that discrimination and inequality were defining features of the South African society in the past. For that reason, the right to equality<sup>26</sup> is one of the most sacrosanct in the South African Bill of Rights. It is for the same reason that equality is mentioned in the constitution as one of the values on which the Republic of South Africa is founded.<sup>27</sup> In an attempt to determine the perceptions of the respondents towards this important constitutional right, the respondents were asked whether they thought that all people in South Africa were treated equally. An overwhelming 78.9% answered in the negative. Only 12.2% thought all South Africans were treated equally, with 8.9% saying they didn't know. The youth (under 30s) were most assertive in their response with 54.1% compared to their older counterparts (24.8%), answering in the negative. Also more females (41.9%) answered likewise compared to the males (37.1%). There were more urban dwellers (47.3%) than rural dwellers (31.6%) who thought all South Africans were treated equally.

26 Provided for under section 9 of the Constitution.

27 See section 1 of the Constitution.

### 3.3.8 Freedom of expression and freedom of religion

Freedom of expression is one of the most fundamental rights that individuals can enjoy and is provided for under section 16 of the Constitution. Accordingly, the respondents were asked whether they thought that all people in South Africa could speak and express themselves freely. About two thirds (68.5%) said this was not so. 41.2% of these, were urban respondents. A large number of youths (48.9%) thought likewise. So too did the females (38.2%). It is important to note that the very negative response to this question was in stark contrast to the responses regarding the issue of freedom of religion.<sup>28</sup> When asked whether people in South Africa were allowed to practice the religion of their choice, 63.1% of the respondents answered in the affirmative. Only 24.4% said this was not so, while 12.4% said they did not know. No significant variations based on area and gender were found in response to this question although the younger people were more assertive in both their affirmative and negative responses (43.2% and 15.8%, respectively) than the older respondents (19.9% and 8.6%, respectively).

The following table illustrates the responses regarding the specific civil and political rights discussed above (only variations according to area type are shown and all figures are rounded to the nearest 1%):

Table 6: Percentage distribution of perceptions regarding specific civil and political rights in South Africa, according to area type

Fundamental human rights	Perceptions regarding specific civil and political rights (%)		
	Urban	Rural	Total percent in each category
Death penalty			
In favour of	28	29	57
Not in favour of	18	13	31
Don't know	7	6	12
Election of leaders			
Fairly elected	20	15	36
Not fairly elected	16	24	40
Don't know	17	7	24
Treatment of prisoners			
Should be with dignity	21	13	34
Should not be with dignity	25	29	54
Don't know	7	5	12
Prisoners' right to vote			
Should be allowed	29	30	59
Shouldn't be allowed	21	13	34
Don't know	4	4	7
Protection of prisoners			
Too much protection	30	23	53
Not too much protection	14	13	27
Don't know	10	11	20

<sup>28</sup> Provided for under section 15 of the Constitution.

Equality for all South Africans			
Equality	4	9	12
No equality	47	32	79
Don't know	3	5	9
Freedom of expression			
Freedom	9	15	23
No freedom	41	27	69
Don't know	4	5	8
Freedom of religion			
Freedom	36	27	63
No freedom	11	13	25
Don't know	6	7	12
Total	54.2	45.8	100

### 3.3.9 Socio-economic rights

The next series of questions were aimed at determining people's perceptions regarding the protection of socio-economic rights. First, respondents were asked whether they thought that people in South Africa had access to adequate housing.<sup>29</sup> Predictably, an overwhelming majority (74%) responded in the negative. Only 15.5% of the respondents answered in the affirmative, while 10.7% said they did not know. Of the 74% who thought that people in South Africa did not have sufficient access to adequate housing, 44.3% were from urban areas. A large number of young respondents (50.6% of the 74%) thought likewise. There was no significant variation based on gender differentiation.

Responses to all the other questions on socio-economic rights depicted a similar trend to the above responses on the right of access to adequate housing. A consistent pattern is clearly discernable. Asked whether they thought that all people in South Africa had access to health care services,<sup>30</sup> for example, 70.1% of the respondents said "no", 22.0% said "yes" and 7.9% said that they did not know. Similarly, 79.5% of the respondents thought that not all people in South Africa had access to sufficient food,<sup>31</sup> 12.7% thought they did and 7.9% did not know. 78.1% of the respondents thought that not all people in South Africa had access to sufficient water,<sup>32</sup> 14.5% thought they did and 7.3% said that they did not know. Regarding the right to education,<sup>33</sup> 77.2% of the respondents thought that not all South Africans had access thereto, 17.5% thought they did and 5.8 % said that they did not know. This same trend is maintained in respect of labour relations.<sup>34</sup> 66.5% of the respondents thought that workers were not treated fairly by the government and other employers. 16.8% thought they were and 14.8% said that they did not know.

29 The right of access to adequate housing is provided for under section 26 of the Constitution.

30 As per section 27(1)(a) of the Constitution.

31 Under section 27(1)(b).

32 Section 27(1)(b).

33 Section 29.

34 Section 23.

There is also a consistent pattern in the variations in terms of area (urban/rural), age groups (under 30 and over 30) and gender (male/female) in respect of the above responses, with most urban and younger respondents emphatically indicating that the socio-economic rights in question are not sufficiently protected. No significant disparity was found in the responses between male and female respondents.

Another socio-economic issue on which public perceptions were sought was in respect of the environmental clause in the Constitution.<sup>35</sup> 37.2% of the respondents said they lived in an environment that was harmful to their health or well-being, 47.2% said they did not, and 15.5% did not know. The most significant variation here was in respect to the urban/rural contrast. More urban respondents (20.1%) said they lived in an unhealthy environment, compared to their rural counterparts (17.3%). More youth respondents answered likewise (25% compared to 12.2% of the older respondents). The males and females were equally balanced in their responses to the question (18% in each case saying they lived in an unhealthy environment). A summary of the responses to questions in respect of certain specific socio-economic rights is depicted in the following table (variations based on area, age group and gender are not shown):

Table 7: Percentage distribution of perceptions regarding socio-economic rights in South Africa

Socio-economic rights	Perceptions regarding human specific human rights (%)		
	Urban	Rural	Total percent in each category
Access to adequate housing			
Sufficient	4	12	15
Not sufficient	44	30	74
Don't know	5	5	11
Access to health care			
Access	8	14	22
No access	42	28	70
Don't know	4	4	8
Access to food			
Sufficient	4	9	12
Not sufficient	45	34	80
Don't know	4	9	8
Sufficient water			
Access	4	11	15
No access	45	33	78
Don't know	4	3	7
Education			
Access	7	10	17
No access	44	33	77
Don't know	3	3	6

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35 Section 24.

Workers treated fairly at work			
Yes	6	11	17
No	41	28	68
Don't know	7	8	15
Live in a healthy environment			
Yes	20	17	38
No	27	20	47
Don't know	6	9	15
Total	54.2	45.8	100

It is clear from the above illustration that according to many South Africans, their socio-economic rights are not sufficiently implemented. The majority of the people think that many South Africans do not have access to adequate housing, health care services, sufficient food, sufficient water and education. They also think that workers are not treated fairly by the government and other employers and that many people live in an environment that is not healthy.

### 3.4 Awareness and perceptions regarding human rights institutions

Chapter 9 of the 1996 South African Constitution establishes several State institutions that play an important role in the protection of human rights. These institutions include the South African Human Rights Commission, the Public Protector and the Commission on Gender Equality, among others. Another important institution for human rights protection is obviously the Constitutional Court.<sup>36</sup> The questions in this part of the survey were aimed at determining the level of public awareness regarding these institutions, public perceptions and opinions towards them and knowledge of the mechanisms of approaching them in the event of one's rights being violated.

About half of the respondents (49.7%) claimed they had never heard of the Human Rights Commission or the work it does. Of the 50.3% who claimed to have heard about the Commission and its work, a significantly large percentage (32) were urban respondents. Conversely more rural respondents (28% out of the 49.7%) had not heard of the Commission and the work it does. This could be attributed to the fact that urban dwellers are usually more enlightened than their rural counterparts. It is perhaps for the same reason that more youths were aware of the SAHRC than their elders (33.9% compared to 13.9%). As usual, there was no significant variation in terms of gender (24.1% males and 26.1% of females having heard of the Commission and its work).

With regard to the Commission on Gender Equality, less than half (47.8%) of the respondents answered that they had heard of the Commission and its work. 29.2% of these were from urban areas. Of the 52.2% of the respondents who had not heard of this particular Commission, more than half (27.7%)

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36 Established in terms of sections 166 and 167.



were from rural areas, thereby reflecting the pattern seen with the SAHRC. The pattern is maintained with age group and gender variations. It is important to note however, that as far as the Public Protector is concerned, about two-thirds of the respondents (66.4%) had not heard of this functionary and its work. Significantly, there wasn't much variation between the urban respondents and their rural counterparts who had not heard of the Public Protector, although more urban respondents than rural respondents (19.1% compared to 14.4%) had heard of this office. It is also significant to note that of the 66.4% who had not heard of the Public Protector, 45.6% were respondents under 30 years of age.

The level of awareness of the Constitutional Court and its work was also fairly low, with 55.5% of the respondents saying they had never heard of it or the work it does. Predictably, more urban respondents than rural respondents had heard of the Court (33% and 12%, respectively). Also, predictably, more rural respondents than urban respondents had not heard of it (34.5% and 20.5%, respectively). Similarly more youths (32.4%) than elders (12.1%) knew about the Court.

The following table shows the general awareness regarding the institutions discussed above and the work they do:

Table 8: Percentage distribution of general levels of knowledge and awareness regarding human rights institutions

Human rights institutions	Has knowledge (%)	No knowledge at all (%)
South African Human Rights Commission	50.3	49.7
Commission on Gender Equality	47.8	52.8
Public Protector	33.6	66.4
Constitutional Court	45.1	54.9

The respondents were then asked which of the various institutions they thought was most important in the protection of human rights. In view of the responses depicted in table 15 above, it was not surprising that a large number said they did not know (28.1%). Of those who claimed to know, 35.3% said it was the South African Human Rights Commission, 8.7% said it was the Commission on gender equality, 14.3% said it was the Public Protector and 13.6% said it was the Constitutional Court. An even higher percentage of 36.2 (more than a third) of the respondents did not know which of the institutions was most successful in protecting human rights. Of those who claimed to know, 27.1% thought it was the Human Rights Commission, 10.7% said it was the Commission on Gender Equality, 13.1% said it was the Public Protector and 12.9% thought it was the Constitutional Court. These responses are depicted in the following table:

Table 9: Percentage distribution of perceptions regarding most important and most successful Human Rights Institutions

Human Rights Institutions	Most important (%)	Most successful (%)
South African Human Rights Commission	23.8	28.4
Commission on Gender Equality	4.6	7.4
Public Protector	11.1	10.2
Constitutional Court	7.6	7.4
Don't know	52.9	46.7
Total	100	100

Knowledge of human rights institutions and their work is obviously not enough in protecting human rights. People also ought to know how to trigger the intervention of such institutions in the event of those people's rights being violated. Accordingly, the respondents were asked if they or anybody they knew had approached any of the institutions discussed above. An overwhelming majority (79.1%) of the respondents answered in the negative. More than half of the younger respondents (53.8%) had not approached any of the institutions and did not know anybody who had. Interestingly, of the 21.1% who had or who knew somebody who had approached one of the institutions, more than half (12%) were from rural areas.

Finally, the respondents were asked how they would approach any of the said institutions if their rights were violated. Predictably, 39% said they would not know. Of those who claimed to know, 20.5% said they would do so directly, 18.1% would do so through a lawyer and 22.3% through a community leader. More urban respondents (11.2% compared to 9.4% rural respondents) would take the direct route, while more rural respondents (14% compared to 8.3% urban respondents) would understandably go through a community leader. The picture that emerges here is that many South Africans do not know how to approach the various human rights institutions for assistance. Even those who think they know do not agree on the appropriate mechanisms or channels.

#### 4. Conclusions

There are several conclusions that can be drawn from the results of the survey analysed in this study. Although a Bill of Rights has been in existence in the South African Constitutional set-up for almost a decade (first in the 1993 interim Constitution and later in the 1996 Constitution), many South Africans are yet to hear about it. Clearly, there is need for vigorous efforts on the part of the government to disseminate information about the Bill of Rights through educational programmes and information campaigns. Many people feel that the government has not done enough in this regard. It is also important to note that according to the survey, the majority of South Africans blame the government for most human rights violations.

Another important conclusion is that many South Africans feel that the death penalty should be reinstated. The findings of this survey are consistent

with the findings of other surveys that have been conducted on this issue. In 1995 a Markinor survey showed that 62% of the South African population favoured the retention of capital punishment, while a survey conducted by the Human Sciences Research Council (HSRC) in July 1996 showed that 71.4% of the population favoured the death penalty.<sup>37</sup>

The results of the survey discussed in this paper also show divergent feelings about prisoners and their rights. While the general perceptions are that prisoners and suspects should not be treated with dignity and that the government provides them with too much protection, many South Africans do not mind prisoners being allowed to vote during elections. An overwhelming majority of South Africans feel they do not enjoy the right to equality. Racism is identified as an important factor in human rights violations. Many South Africans feel that the right to freedom of religion is well protected, although this is not the case with freedom of expression.

There is little doubt that people are not happy with the level of protection of their socio-economic rights. Respondents were consistently in agreement on the lack of government delivery regarding access to adequate housing, health care services, sufficient food, sufficient water and education. People are also not happy about the unfair treatment of employees and the state of the environment. This is cause for great concern. As one commentator has rightly opined:

For a human rights culture to develop, substantive meaning must be given to the socio-economic rights in the Constitution. Improving the lives of the millions of destitute South Africans, particularly in relation to housing and employment, is critical, not only because it is a constitutional imperative, but because without these rights little progress will be made in ensuring public acceptance of civil and political rights.<sup>38</sup>

It is clear from the survey that public knowledge of the existence of human rights institutions and the work they do is severely limited. So too is the knowledge of the mechanisms and channels of approaching these institutions. It is therefore concluded that there is a serious need to educate the public, not only on the Bill of Rights and the processes and mechanisms of its enforcement, but also on the existence and functions of the various human rights institutions. Some of these very institutions (for example the South African Human Rights Commission and the Commission for Gender Equality) whose constitutional mandate is to educate the public on human rights, have not adequately executed this mandate.

One of the most important lessons to be learnt from the above survey is that a transitional society, indeed any democratic society, needs a constitution with norms and values that form the foundation of the way of thinking for all citizens of that society. The fundamental rights provisions should therefore be more than "mere requirements against which statutory enactments are

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37 See HSRC <<http://www.hrsc.ac.za/media/1996/9/19960904.html>> 20/03/2003.

38 Sarkin 2000:422.

tested for validity.”<sup>39</sup> The Bill of rights needs to be progressive and all-persuasive in its attempts to address and redress the violations of human rights hitherto experienced in such societies.

Another important lesson is that a constitution should not only incorporate most or all international human rights norms into a country’s legal system, but it should also adequately provide for measures to enforce them. This study shows that the South African Constitution has taken this into account. In particular, the role of the constitutional court in protecting human rights cannot be over emphasized.

This study also shows that one factor which contributes most to the strength and endurance of a living constitution is constitutional education. If a constitution “remains the secluded domain of lawyers or merely an arcane source for judges incantations, it stands little chance of entering the hearts and minds of the people”.<sup>40</sup> Indeed, a constitution and the rights enshrined therein have to be understood by the people in order to benefit them. People cannot enforce their rights if they don’t know that they have them. An important lesson therefore, is that the starting point in protecting people’s rights is by sensitizing them and making them aware of the existence of such rights.

Finally, in the words of the famous Nelson Mandela, “the experience of South Africans and of all peoples everywhere has taught that in order for the rights and freedoms embodied in constitutions to be realized, they must become a part of the everyday reality of citizens’ lives, and the institutions protecting them must be deeply entrenched.”<sup>41</sup>

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39 Devenish 1998: 22.

40 Weichers, Foreword to Devenish 1998:vii.

41 Foreword to the National Action Plan (1998).

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## Annexure: Questionnaire

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# Protection of human rights in South Africa: public awareness and perceptions

Personal information: Age of Respondent: \_\_\_ years old

Sex: 

Male	Female
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*Please mark (X) the right answer.*

### PART 1 THE BILL OF RIGHTS IN THE CONSTITUTION

1. Have you ever heard of the Bill of Rights in the new South African Constitution?

A	Yes
B	No

2. Does the Bill of Rights protect only South African citizens or all people living in South Africa?

A	Only South African citizens
B	All people living in South Africa
C	I don't know

3. Do you think the government has done enough to make all people aware of the existence of the Bill of Rights in the Constitution?

A	Yes
B	No
C	Don't know

PART 2 HUMAN RIGHTS VIOLATIONS

1. Where do you think human rights are violated most?

A	In schools
B	At home
C	In the work place
D	In rural areas
E	In urban areas
F	I don't know

2. Who do you think violates human rights most?

A	The government against the citizens
B	White people against black people
C	The police against suspects and prisoners
D	Black people against Whites
E	South Africans against foreigners
F	I don't know

3. In your opinion, which of the following is the main cause of human rights violations?

A	Racism
B	Lack of access to basic social services
C	Social and economic inequalities
D	None of the above

4. The Constitution provides for the right to life, which means the death penalty has been outlawed. Do you think this is a good thing?

A	Yes
B	No
C	I don't know

5. Were all the leaders in your area properly elected through the will of the people?

A	Yes
B	No
C	I don't know

6. Should prisoners be treated with dignity?

A	Yes
B	No
C	I don't know

7. Should prisoners be allowed to vote during elections?

A	Yes
B	No
C	I don't know

8. Do you think the Constitution provides too much protection for suspects and prisoners?

A	Yes
B	No
C	I don't know

9. The Constitution provides for the right to equality. Do you think all people in South Africa are treated equally?

A	Yes
B	No
C	I don't know

10. Do you think people in South Africa speak and express themselves freely?

A	Yes
B	No
C	I don't know

11. Do you think people in South Africa are allowed to practice the religions of their choice?

A	Yes
B	No
C	I don't know

12. Do you think all people in South Africa have access to adequate housing?

A	Yes
B	No
C	I don't know

13. Do you think all people in South Africa have access to health care services?

A	Yes
B	No
C	I don't know



14. Do you think all people in South Africa have access to sufficient food?

A	Yes
B	No
C	I don't know

15. Do you think all people in South Africa have access to sufficient water?

A	Yes
B	No
C	I don't know

16. Do you think all people in South Africa have access to education?

A	Yes
B	No
C	I don't know

17. Do you think that workers are treated fairly by the government and other employers?

A	Yes
B	No
C	I don't know

18. Is the environment you live in harmful to your health or well-being?

A	Yes
B	No
C	I don't know

### PART 3 HUMAN RIGHTS INSTITUTIONS

1. Have you ever heard of the South African Human Rights Commission and the work it does?

A	Yes
B	No

3. Have you ever heard of the Commission on Gender Equality and the work it does?

A	Yes
B	No

4. Have you ever heard of the Public Protector's office and the work it does?

A	Yes
B	No

5. Have you ever heard of the Constitutional Court and the work it does?

A	Yes
B	No

6. In your opinion, which of the above institutions is the most important for the protection of human rights?

A	The South African Human Rights Commission
B	The Commission on Gender Equality
C	The Public Protector
D	The Constitutional Court
E	I don't know

7. In your opinion, which of those institutions has been most successful in protecting human rights?

A	The South African Human Rights Commission
B	The Commission on Gender Equality
C	The Public Protector
D	The Constitutional Court
E	I don't know

8. Have you or anybody you know approached any of the institutions mentioned above?

A	Yes
B	No

9. How would you approach any of the above institutions if you needed to?

A	Directly
B	Through a lawyer
C	Through a community leader
D	I wouldn't know how