***Draft an 800 word essay on the death penalty in South Africa. Your answer should comply with general norms and standards expected of academic essays and should include footnote references. It must clearly provide your opinion on the death penalty with references to sources that justify and support your argument.***

[[1]](#footnote-1)The death penalty in South Africa is a contentious issue, with some arguing it deters crime and provides justice, while others view it as a violation of human rights and perpetuates violence. This essay critically examines the death penalty's outdated and inhumane nature.

The legal status of the death penalty in South Africa has changed dramatically since the apartheid era. The death penalty was abolished under the interim Constitution of 1993, which emphasized the right to life as a basic human right. In the historic case of [[2]](#footnote-2)*State v Makwanyane and Another (1995)*, the Constitutional Court of South Africa declared the death sentence unconstitutional, paving the way for its abolition. This ruling established the legal status of the death penalty in South Africa and created a precedent against its revival. South Africa's history of violence and tyranny has led to high crime and social unrest. While some view the death penalty as a solution, research shows it is ineffective as a deterrent to crime. States without the death sentence have lower murder rates, suggesting that the death sentence is ineffective in reducing crime and improving public safety. [[3]](#footnote-3)Courts were allowed to impose corporal punishment on juveniles before April 27, 1994, but this was deemed unconstitutional after the S v Williams and Others 1995 (3) SA 632 (CC) decision

Moreover, the death penalty is often discriminatory in its application, with the poor and marginalized being disproportionately represented on death row. This raises serious concerns about the fairness and equality of the justice system. The death penalty also perpetuates a cycle of violence, rather than rehabilitating offenders or addressing the root of crime

[[4]](#footnote-4)The death penalty is argued to violate the South African Constitution's right to life, which guarantees life and dignity. Capital punishment is often cruel and inhumane, as seen in countries using methods like hanging and firing squads, which are incompatible with the constitutional guarantee of life and dignity. South Africa's abolition of the death penalty was influenced by international human rights law, particularly the 1994 ratification of the International Covenant on Civil and Political Rights. This treaty, which restricts the use of the death penalty to cases requiring greater harm prevention, and the country's commitment to human rights, created a strong legal and moral imperative for its repeal.

[[5]](#footnote-5)South Africa's decision to abolish the death penalty is based on recognizing the fallibility of the judicial system, since several cases have demonstrated the possibility of false convictions and irreparable executions. This coincides with the global trend of abolishing capital punishment and promoting a justice system that prioritizes reform and reconciliation over retribution

South Africa has abolished the death penalty due to empirical evidence and international human rights standards.

[[6]](#footnote-6)In South Africa, the 1993 Constitution introduced the concept of 'ubuntu' into the law, emphasizing the need for understanding but not vengeance, reparation but not retaliation, and ubuntu but not victimisation. This concept was referred to by several Constitutional Court judges in determining the unconstitutionality of the death penalty. Ubuntu translates to humaneness, personhood, and morality, and is expressed metaphorically in the phrase umuntu ngumuntu ngabantu, which emphasizes group solidarity and survival issues. It encompasses key values such as group solidarity, compassion, respect, human dignity, conformity to basic norms, and collective unity. The spirit of ubuntu emphasizes respect for human dignity, marking a shift from confrontation to conciliation. This concept has been used in cases where the death penalty is deemed unconstitutional.

In conclusion, the death penalty in South Africa is an outdated and inhumane punishment that doesn't deter crime, is discriminatory, and violates the right to life and dignity. It perpetuates a cycle of violence and doesn't address the root causes of crime. Instead, South Africa should focus on addressing social and economic injustices that drive crime and promoting a more equitable and just society, the legal position of the death penalty in South Africa is a clear opposition to state-sanctioned violence and a commitment to human rights and justice, reflecting the country's progress towards a more inclusive and equitable society guided by dignity, equality, and justice for all.

1. Van der Spuy, E. (2000). Criminal justice in South Africa: A sociological analysis. Cape Town: Juta. [↑](#footnote-ref-1)
2. *State v Makwanyane* *and Another,* 1995, 6 BCLR 665 (CC). [3.pdf](https://www.saflii.org/za/cases/ZACC/1995/3.pdf) [↑](#footnote-ref-2)
3. Kleyn, D., 2019. chapter6:the constitution:human rights:6.10-Examples of the impact of the Bill of Rights. In: *beginners's guide for law students.* s.l.:juta, p. 200. *S v Williams and Others* 1995 (3) SA 632 (CC) [6.pdf](https://www.saflii.org/za/cases/ZACC/1995/6.pdf) [↑](#footnote-ref-3)
4. Constitution of the republic of South Africa , 1996, Section 11 [↑](#footnote-ref-4)
5. Kleyn, D. F. Z. E. &. M. ,. P., 2019. chapter10:criminal law10.6 Controversial form of punishment: death:10.6.2-arguments against the death penalty. In: *Beginner’s guide for law students.* s.l.:juta, p. 282. [↑](#footnote-ref-5)
6. Kleyn, D. F. Z. E. &. M. ,. P., 2019. chapter 18:perspectives on the law:18.9-African constitutional jurisprudence . In: *Beginner’s guide for law students.* s.l.:juta, p. 412. [↑](#footnote-ref-6)