

**CAN THE DEATH PENALTY STILL
BE CONSIDERED A “CRUEL,
INHUMANE AND DEGRADING
PUNISHMENT” IN THE FACE OF
SOUTH AFRICAN PRISON
CONDITIONS?**

1 Introduction

The use of the death penalty as a form of punishment can be traced back to the earliest human civilisations. South Africa was no stranger to this punishment, and it was only abolished here in 1995. South Africa accepted this form of punishment through its colonisation by the English (Knowles “The Abolition of the Death Penalty in the United Kingdom: How It Happened and Why It Still Matters” *The Death Penalty Project* (2015) 61). The Union of South Africa made use of hangings throughout the 1900s; an average of 4 000 executions were implemented over an 80-year period (Cronje (ed) “Capital Punishment in South Africa: Was Abolition the Right Decision? Is There a Case for South Africa to Reintroduce the Death Penalty?” *South African Institute for Race Relations* 2016 1. In 1989, President FW de Klerk placed a moratorium on the physical implementation of executions during the negotiations of the Convention for a Democratic South Africa (Cronje *South African Institute for Race Relations* 1). The Constitution of the Republic of South Africa Act 200 of 1993 (Interim Constitution) was adopted during these negotiations; while it contained a comprehensive bill of rights, it did not address the use of capital punishment.

The fate of the death penalty was left to the courts to address in 1995 in the landmark case of *S v Makwanyane and Mchunu* ((1995) 6 BCLR 665). Chaskalson J stated that section 277(1)(a) of the Criminal Procedure Act (51 of 1977) was unconstitutional with reference to the following rights: section 9 (life); section 10 (dignity) and section 8(1) (equality before the law) (*S v Makwanyane supra* par 26; the Interim Constitution). He stated that the reasoning for this decision was that the imposition of the death penalty amounted to a cruel, inhumane or degrading punishment inconsistent with the right to life and human dignity. Moreover, this punishment cannot be reversed in the case of error or enforced in a manner that is not arbitrary (*S v Makwanyane supra* par 145–146). However, in the 28 years since this decision was made, South Africa has experienced an escalation in violent and sexual crimes, including murder, robbery with aggravating circumstances, rape and kidnapping. With this in mind, South Africans are left to question whether our courts should be implementing more serious sentences for these crimes and whether the decision made by Chaskalson J was correct.

This note focuses specifically on the understanding of the term “cruel, inhumane and degrading punishment”, and examines the present conditions of life imprisonment in a South African prison in order to determine whether the death penalty can still be considered a non-viable punishment (based on the interpretation of this term).

2 The death penalty and the meaning of the term “cruel, inhumane and degrading punishment” when imposing a legal sanction

In order to understand why life imprisonment in the conditions of a South African prison may be considered “torture” or “cruel, inhumane or degrading”, the origins of the terms and their definitions must be understood.

In terms of the Constitution of the Republic of South Africa, 1996 (Constitution), all persons have the right to freedom and security of persons, which includes the right not to be tortured and not to be treated or punished in a cruel, inhumane or degrading way (s 12(1)(d) and (e) of the Constitution). Section 35(2)(e) of the Constitution states that every prisoner has the constitutional right to conditions of detention that are consistent with human dignity (s 12(1)(d) and (e) of the Constitution). Furthermore in 2013, the Prevention of Combating and Torture of Persons Act (13 of 2013) was established. The long title to the Act states that it was enacted to give effect to the United Nations Convention Against Torture and Other Cruel, Inhumane and Degrading Treatment or Punishment; to create the offence of torture and others associated therewith; and to prevent and combat the torture of persons within or outside the borders of South Africa. It is therefore apparent that South Africa considers torture, and any act or treatment associated therewith, as a punishable crime.

In terms of international law, there exists an express covenant within which the use and limitations of the use of death penalty are expressed. This is the International Covenant on Civil and Political Rights (ICCPR) (UNGA 999 UNTS 17 (1966). Adopted: 16/12/1966; EIF: 23/03/1976). Article 6 of this covenant states that every person has the right to life, of which they cannot be arbitrarily deprived; the sentence of death can only be imposed for the most serious crimes committed by adult, non-pregnant offenders; the death sentence cannot be retroactively applied; and offenders who receive such a sentence must be given an opportunity to seek pardon. Article 7 states that the use of torture, cruel, inhumane or degrading treatment or punishment is prohibited. Therefore, the use of the death penalty as a legal sanction must comply strictly with these provisions; an offender must receive a fair trial, and only receive the death penalty for a serious and legally recognised crime, with the opportunity for appeal or pardon. This covenant failed to define what is regarded as torture or cruel, inhumane or degrading treatment.

The Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT) (UNGA 1465 UNTS 85 (1984). Adopted: 10/12/1984; EIF: 26/06/1987) at article 1.1 states that torture is

“any act by which severe pain or suffering whether physical or mental, is intentionally inflicted on a person by, or with the instigation or consent of a public official or a person acting in an official capacity so as to intimidate, punish or obtain information from the person (among other motives).”

Article 1.1 of the CAT also states that torture does not include pain or suffering that is integral or related to a legal sanction. The CAT, however, fails to provide a comprehensive definition of what “cruel, inhumane or degrading punishment” is, merely stating that acts that do not reach the severity of, or fall short of, the intentions of torture are prohibited (art 16.1).

Express provisions about “cruel, inhumane or degrading punishment” can also be found in article 3 of the European Convention on Human Rights (Council of Europe *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14* ETS 5 (1950) (Adopted: 4/11/1950; EIF: 03/09/1953; Amendments EIF: 01/06/2010) ,and article 5 of the African Charter on Human and Peoples’ Rights created by the Organisation of African Unity (OAU) (Banjul Charter) ((27 June 1981) CAB/LEG/67/3 rev 5, 21 ILM 58 (1982). Adopted: 27/06/1981; EIF: 21/10/1986).

In his judgment, (*S v Makwanyane supra* par 26), Chaskalson J expressed the view that death should be considered a cruel punishment because of the legal processes involved with its application as well as the uncertainty that can result from these processes. Inhumanity can be found in its execution which denies a person their humanity. Lastly, according to Chaskalson J, the death penalty is a degrading punishment because it strips a person of their human dignity and treats them rather as an object that, owing to the disruption of social codes, should be eliminated by the State. As such, the court came to the conclusion that the death penalty is a cruel, inhumane and degrading punishment – as these words are understood through the application of the Constitution, and not necessarily through the ordinary meaning of the words.

In opposition, this note is of the opinion that the arguments made by Ernest van den Haag are relevant. Van den Haag argues that to refer to the punishment of a crime as degrading is unfounded (Van den Haag “The Ultimate Punishment: A Defense” 1986 99 *Harvard Law Review* 1662 1668). The degradation of the human life of an offender began the moment the offender voluntarily chose to commit crime and assume all the risks associated therewith (Van den Haag 1986 *Harvard Law Review* 1662 1668). Owing to the fact that the offender could have avoided punishment by refraining from committing crime, the punishment imposed for the criminal act cannot be regarded as degrading. Execution, specifically in *Makwanyane*, was referred to as contrary to the right to dignity. However, execution affirms a convicted person’s mortality by affirming their rationality and responsibility for taking the actions they committed (Van den Haag 1986 *Harvard Law Review* 1668–1669). Death, inherently, is a common fate among all human beings (Van den Haag 1986 *Harvard Law Review* 1668–1669); it cannot be considered inhumane because death is inherently a human process. Considering this “inhumanity”, it is often argued that capital punishment is “uncivilised”. Death as a form of punishment has been used by almost every emerging civilisation and as such is fundamentally civilised

(Van den Haag 1986 *Harvard Law Review* 1669). The alternative to death – life imprisonment – contravenes more human rights than does the death penalty, and deprives the prisoner of freedom, safety, bodily integrity and autonomy (Van den Haag 1986 *Harvard Law Review* 1669). Using the very definition of the words used to prohibit and aggravate the use of the death sentence, Van den Haag mitigates its use as a form of punishment.

When the United Nations Human Rights Committee (UNHRC) was asked to make a comment on the definition of the term as it is used in the ICCPR, they stated that they did not consider it necessary to assemble a comprehensive list of which acts constitute cruel, inhumane or degrading treatment or punishment, or to establish precise distinctions between the different kinds of punishment or treatment (par 4 of HRC *CCPR General Comment 20: Article 7 (Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment)*.⁴ (1992). Adopted 10/03/1992). The UNHRC stated that in order to determine what is cruel, inhumane and degrading, the circumstances and facts of each individual case would need to be considered; these include the duration of the treatment, the manner of the treatment, its physical or mental effects, and the sex, age and relative health of the person (*Vuolanne v Finland* 96 ILR 649 par 657). Therefore, the understanding of what constitutes “cruel, inhumane and degrading treatment or punishment” cannot be determined from the ICCPR or the UNHRC itself but should rather be considered through practical application in case law.

2 1 *International case law*

2 1 1 *Denmark et al v Greece*

The applicant governments in this case (Denmark, Norway and Sweden) had made the application owing to the Royal Decree of 21 April 1967, in which a state of siege had been declared in Greece and in which certain parts of the Greek Constitution had been suspended (*Denmark et al v Greece* The European Commission of Human Rights (31 May 1968) par A1). The European Commission of Human Rights (European Commission) stated that inhumane treatment is that which “causes severe suffering, mental or physical, which in the particular situation is unjustifiable” (“*Denmark et al v Greece: Report of 5 November 1969*” *Yearbook of the European Convention on Human Rights XII* (1969) par 186). The European Commission also defined torture as “an aggravated form of inhumane treatment” (*Denmark et al v Greece Yearbook of the European Convention on Human Rights XII* par 186).

2 1 2 *The Republic of Ireland v The United Kingdom*

The court in this case was required to determine whether the interrogation techniques used by the United Kingdom in Northern Ireland between 1971 and 1975 were acts that amounted to torture, inhumane or degrading treatment (*Webb Republic of Ireland v United Kingdom* (1979–1980) 2 EHRR 25, *European Court of Human Rights* (2020)). In the European Court

of Human Rights, the difference between torture and inhumane treatment was considered. The court stated that torture attaches “a special stigma to deliberate inhumane treatment causing very serious and cruel suffering” (Webb *The Republic of Ireland v The United Kingdom* (1979–1980) 2 EHRR 25 80 par 167). The court also determined that “degrading” conduct is that which induced fear in its victims, including feelings of agony and subservience leading to humiliation and degradation of their being (Webb *The Republic of Ireland v The United Kingdom* (1979–1980) 2 EHRR 25 80 par 167).

2 1 3 *Tyrer v United Kingdom*

The applicant in this case, Mr Tyrer, at age 15, pleaded guilty before the Isle of Man local juvenile court to unlawful assault with the intent to do actual bodily harm to another pupil in his school (*Tyrer v United Kingdom* (1979–80) 2 EHRR 1 9 par 9). The assault that occurred was allegedly motivated by the fact that the victim reported the applicant, with three other boys, for bringing beer into the school (*Tyrer v United Kingdom supra* par 9). Owing to the victim’s reporting this, the boys had all been caned (*Tyrer v United Kingdom supra* par 9). The applicant was also sentenced to three strokes of the rod on the same day in accordance with the legislation (*Tyrer v United Kingdom supra* par 9). The applicant appealed against this sentence, but this was dismissed, and a medical practitioner examined and ensured that the applicant was fit to receive the punishment (*Tyrer v United Kingdom supra* par 9). The applicant was birched that afternoon when he was asked to lower both his trousers and underwear and to bend over a table (*Tyrer v United Kingdom supra* par 10). The applicant was held down by two police officers. The first stroke of the birch caused it to splinter (*Tyrer v United Kingdom supra* par 10). After the third stroke, the applicant’s father lunged at the police officer (*Tyrer v United Kingdom supra* par 10). The applicant raised the concern that the punishment was required to be administered over one’s clothing regardless of age (*Tyrer v the United Kingdom supra* par 12). The European Court on Human Rights in this case had to distinguish between inhumane and degrading punishment. The court held that in order to be considered an inhumane punishment, suffering had to reach a certain level of severity (*Tyrer v United Kingdom supra* par 29). The court stated that although the applicant’s sentence did not amount to the level of suffering required, it did amount to a degrading punishment (*Tyrer v United Kingdom supra* par 29).

2 2 *National case law*

2 2 1 *S v Williams*

In this case, the applicants were a group of juveniles who had all been sentenced by different magistrates to receive a sentence of strokes with a light cane, commonly referred to as “corporal punishment” (*S v Williams* (1995) 7 BCLR 86 1 (CC) par 1). The applicants appealed this sentence on the grounds that it was undignified and unconstitutional to continue to

administer such a punishment. The court was left to consider whether this punishment was “cruel, inhumane and degrading” or “severely humiliating” (*S v Williams supra* par 11). The court stated that whether something is “cruel, inhumane and degrading punishment or treatment” is dependent on an assessment of what the society acknowledges to be decent and in line with human dignity (*S v Williams supra* par 35). In order to determine where a punishment can be defined as cruel, inhumane or degrading, the court must assess it with due consideration of the values that underpin the Constitution (*S v Williams supra* par 37). As such, the court determined that any punishment administered must respect human dignity and be consistent with the Constitution (*S v Williams supra* par 38).

2 2 2 *Stransham-Ford v The Minister of Justice and Correctional Services*

In this case, the applicant applied to have physician-assisted suicide (euthanasia) administered to him. The applicant was diagnosed with terminal, stage-4 cancer and was informed that he only had a few weeks left to live (*Stransham-Ford v Minister of Justice* (2015) 6 BCLR 737 (GP) par 3). The applicant brought an urgent application to the court in order to obtain permission to have a medical practitioner end his life, or for a medical practitioner to provide him with lethal agents to enable him to end his own life: as such, the medical practitioner would not be held accountable for such an act (*Stransham-Ford v Minister of Justice supra* par 4). The applicant had, many a time, been rushed to hospital for extreme pain as a result of his cancer (*Stransham-Ford v Minister of Justice supra* par 6). The applicant argued that palliative care did not satisfy his needs and was against his right to die in a dignified manner (*Stransham-Ford v Minister of Justice supra* par 6). The applicant’s quality of life had severely deteriorated, and even the medication administered to him to help with the symptoms was contributing to such deterioration (*Stransham-Ford v Minister of Justice supra* par 7). The applicant could no longer do normal human daily activities without assistance and was fully aware that as the cancer progressed this would become worse; as such he would be made to suffer to his death (*Stransham-Ford v Minister of Justice supra* par 9). The court was made to consider the right to dignity, the right not to be made to endure torture, and the right not to be treated in a cruel, inhumane and degrading manner. The applicant based his argument on the grounds of sections 2(1)(e), 5(1) and 8(1)(d) of the Animals Protection Act (71 of 1962), which obliged an owner of an animal to destroy it if it be seriously injured or diseased or in such a condition that prolonging its life would be cruel and result in unnecessary suffering, and that such mercy and dignity in death should be afforded to him (*Stransham-Ford v Minister of Justice supra* par 16). The applicant also referred to the case of *Carter v Canada* (Attorney-General) (2015 SCC5), in which the court stated that people who are terminally ill should not be condemned to a life of eternal suffering (*Stransham-Ford v Minister of Justice supra* par 18). Without the option of physician-assisted suicide, such a person is left with the choice either to take their own life, which could be violent, dangerous or possibly unsuccessful, or to have to allow their illness to degrade them to such an extent that they eventually die owing to natural

causes after a long time of suffering (*Stransham-Ford v Minister of Justice supra* par 18). Essentially, the court came to the conclusion that it is both degrading and undignified to leave a person in a state of suffering for extended periods of time.

2 2 3 *Llewellyn Smith v The Minister of Justice and Correctional Services*

This case, was brought by a group of applicants who claimed that, while serving their sentence in Leeuwkop Maximum Correction Centre in Gauteng, they endured torture and cruel treatment at the hands of the correctional officers (Redress “*Llewellyn Smith v The Minister of Justice and Correctional Services, South Africa (third party intervention)*” (2020) <https://redress.org/casework/llewellyn-smith-v-the-minister-of-justice-and-correctional-services-south-africa-third-party-intervention/> (accessed 2023-05-19)). The applicants alleged that they were beaten with batons, shocked with electric shock shields, attacked by dogs and made to squat in painful positions for prolonged periods of time (Redress <https://redress.org/casework/llewellyn-smith-v-the-minister-of-justice-and-correctional-services-south-africa-third-party-intervention/>). The applicants claimed that their right not to be tortured and their right not to be treated or punished in a manner that is cruel, inhumane or degrading was violated (Redress <https://redress.org/casework/llewellyn-smith-v-the-minister-of-justice-and-correctional-services-south-africa-third-party-intervention/>).

It was suspected that the court would address the interpretation of the terms “cruel, inhumane and degrading punishment and treatment” and “torture”. The court instead addressed the prohibition of such treatment nationally and internally and classified segregation for extended periods and denial of access to adequate medical care as such (*Smith & Others v Minister of Correctional Services (21639/2015) [2015] ZAGPJHC 1127*).

3 Prison conditions in South Africa

In the case of *R v Swanepoel* ((1945) AD 444), it was determined that the purposes of punishment are deterrence, retribution, rehabilitation and prevention. As such, the punishment of imprisonment should serve these purposes without encroaching upon the fundamental rights of an offender. It is the duty of the Department of Correctional Services to ensure that the rights and needs of the offender are met.

South African prison conditions are, at the best of times, poor and degrading. South African inmates experience extreme overcrowding and inhumane living conditions, including poor ventilation, lack of sanitation facilities, no privacy, a shortage of adequate beds, poor health and mental care facilities, lack of sufficient supervision and inadequate rehabilitation facilities and opportunities (Wasserman “*Prison Violence in South Africa: Context, Prevention and Response*” (2023) <https://www.saferpaces.org.za/understand/entry/prison-violence-in-south-africa-context-prevention-and-response#:~:text=Inmates%20and%20remand%20detainees%20>

experience,oversight%3B%20and%20poor%20healthcare%20provision (accessed 2022-11-21)). Owing to overcrowding and a culture of toxic masculinity among prisoners, prisons have the highest frequency of sexual violence and sexual disease transmission (*R v Swanepoel supra*). The most frequently transmitted diseases are human immunodeficiency virus (HIV) and tuberculosis (TB), infection rates being higher than those of the general population (Wasserman <https://www.saferspaces.org.za/understand/entry/prison-violence-in-south-africa-context-prevention-and-response#:~:text=Inmates%20and%20remand%20detainees%20experience,oversight%3B%20and%20poor%20healthcare%20provision>). Essentially, prisons and sentences of imprisonment should only impact on the right to freedom (s 12 of the Constitution). However, the present conditions in South African prisons violate many more human rights. Through the violation of these rights, South African prisons fail to meet the minimum standards for imprisonment established in national and international law and standards (Wasserman <https://www.saferspaces.org.za/understand/entry/prison-violence-in-south-africa-context-prevention-and-response#:~:text=Inmates%20and%20remand%20detainees%20experience,oversight%3B%20and%20poor%20healthcare%20provision>).

Sexual violence is highly prevalent in South African prisons among inmates. This sexual violence can be attributed to overcrowding, a culture of toxic masculinity within male prisons, and a shortage of staff to watch over inmates (Wasserman <https://www.saferspaces.org.za/understand/entry/prison-violence-in-south-africa-context-prevention-and-response#:~:text=Inmates%20and%20remand%20detainees%20experience,oversight%3B%20and%20poor%20healthcare%20provision>). The perpetuation of gender constructs within male prisons influences men to use rape and sexual violence as a way of expressing male dominance and establishing a hierarchical structure among all-male inmates (Wasserman <https://www.saferspaces.org.za/understand/entry/prison-violence-in-south-africa-context-prevention-and-response#:~:text=Inmates%20and%20remand%20detainees%20experience,oversight%3B%20and%20poor%20healthcare%20provision>). Hlongwane posits that weaker, younger and first-time offenders are often forced to assume the role assigned to women in the outside world (Hlongwane *Life Imprisonment in Penological Perspective* (doctoral thesis, University of South Africa) 1998 117). The psychological and physical impact of sexual violence upon these men has a serious negative impact upon rehabilitation (Hlongwane *Life Imprisonment in Penological Perspective* 117). The men who commit rape, as well as the men who experience rape and other violent sexual offences, are prone to perpetuate this behaviour upon release or parole (Wasserman <https://www.saferspaces.org.za/understand/entry/prison-violence-in-south-africa-context-prevention-and-response#:~:text=Inmates%20and%20remand%20detainees%20experience,oversight%3B%20and%20poor%20healthcare%20provision>). Victimised offenders or witnesses thereto are unlikely to report the acts or volunteer information out of fear for their lives (Hlongwane *Life Imprisonment in Penological Perspective* 118). Thus, keeping persons in prison for extended periods of time forces them to endure the inhumanity, suffering and degradation of being raped or sexually

violated by their fellow inmates, and this increases the prevalence of reoffending upon release.

Rehabilitation, although not expressly a right of an offender, is an important goal of the Department of Correctional Services (DCS). The resources and opportunity to provide this to inmates is severely lacking. Omar states that rehabilitation is not aimed at curing an offender but is rather an attempt to restore the relationship between society and the offender to ensure successful reintegration with society and prevent reoffending (Omar "A Prisoner's Right? The Legal Case for Rehabilitation" 2011 37 *SA Crime Quarterly* 19 20). Terblanche argues that imprisonment has proved to have almost zero success in achieving rehabilitation (Terblanche *A Guide to Sentencing in South Africa* (2016) 180). In order for rehabilitation to be successful there must exist a sufficient amount of funds, education, infrastructure and professionals to ensure such a result (Terblanche *A Guide to Sentencing* 181). It is common knowledge that South Africa does not possess the finances, facilities and professionals to rehabilitate every type of offender. Terblanche argues that rehabilitation will only be effective in cases where an offender commits a crime as a result of a well-known and understood condition; the treatment of such a condition is well-practised; the success rate of such treatment is high and it is known that if the offender is not rehabilitated for this condition there is a high chance of recidivism, regardless of the length of their sentence (Terblanche *A Guide to Sentencing* 182). Thus, where these conditions do not exist, incarceration is likely to make the offender a greater danger to society upon release.

There also exist specific conditions that cannot be treated, or for which treatment is very rarely successful – such as that for paedophiles (*S v De Klerk* (2010) 2 SACR 40 (KZP) par 8). Finally, there is no definitive research to show that rehabilitation programmes reduce reoffending rates or that it is substantially successful (Omar 2011 *SA Crime Quarterly* 21). Taking all of the above into consideration, the DCS's failure to rehabilitate offenders, while it exposes them to inhumane conditions during long prison sentences and then releases such offenders into society, is likely to be more harmful to society and offenders alike.

In the case of *S v Makwanyane* (*supra* par 26), it was stated that when considering the abolition of the death penalty, it was important to consider the courts' role as the protector of the outcast and the marginalised. In the case of *Van Biljon v Minister of Correctional Services* ((1997) 4 SA 441 (C)), the court stated that the DCS bears a higher duty of care towards inmates and remand detainees because it has placed them in incarceration. As such, the DCS is required to fulfil all the detained persons' rights and ensure that they are not arbitrarily deprived of them. By instituting the death penalty, the DCS would bear less of a duty in respect of the incarcerated than they currently do. Capital punishment, although infringing on the right to life (s 11) (the Constitution), would only impede on one human right of the inmate rather than the multiple that are currently, and continue to be, violated on a daily basis in prisons.

4 Conclusion

The decision that sealed the fate of the use of the death penalty as a form of punishment in South Africa, *Makwanyane*, stated that it is a cruel, inhumane and degrading form of punishment. The debate on what is to be considered “cruel, inhumane and degrading” is complex, and can only truly be determined on a case-by-case basis. However, there is an understanding, within both foreign and national law, that living in conditions that contravene human rights, or that require a person to live in an undignified manner or condition, is considered cruel, inhumane and degrading treatment or punishment.

South African prisons continue to infringe on human rights on a daily basis. Imprisonment should only encroach upon the right to freedom, while providing substantially for the other basic human rights to which a prisoner is entitled in terms of section 35 of the Constitution. It is the responsibility of the Department of Correctional Services to fulfil these rights because they are responsible for incarcerating offenders. However, at present, South African prisons are overpopulated, which has led to the undernourishment of prisoners, a lack of beds, bedding, clothing and adequate hygiene facilities. Overcrowding, especially in male prisons, has also resulted in the imposition of hierarchical heteronormative structures that are determined by and imposed through rape and other forms of sexual violence. The frequency of sexual violence in prisons has led to a high frequency of transmission of diseases such as human immunodeficiency virus and tuberculosis. As a result, the Department of Correctional Services encroaches upon more than just a prisoner’s basic human right to freedom.

In the words of Lee Anderson, the deputy Chairman of the Conservative Party in the United Kingdom: “Nobody has ever committed a crime after being executed. A one hundred percent success rate” (Heale “Lee Anderson: ‘Capital Punishment? 100% Effective’” (11 February 2023) *The Spectator*). Although this statement was considered farcical, the death penalty does achieve all purposes of punishment that the court in *R v Swanepoel* stated it should achieve – barring rehabilitation, for which our current prison system cannot cater consistently and successfully.

With this in mind, and considering the above exposition of what is considered “cruel, inhumane and degrading”, it can be concluded that the state of South African imprisonment (particularly for those serving life sentences) can be considered as a punishment that amounts to such. The death penalty, although it encroaches upon the right to life, does not require the offender to endure conditions that do not meet the basic standards required for a dignified human existence.

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