



## McCallum v. South Africa

Communication No. 1818/2008; U.N. Doc. CCPR/C/100/D/1818/2008

**Country:** South Africa

**Region:** Africa

**Year:** 2010

**Court:** United Nations Human Rights Committee United Nations Human Rights Committee

**Health Topics:** Health care and health services, HIV/AIDS, Prisons, Violence

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Right to health

### Facts

Bradley McCallum, a detainee at a maximum correctional facility in South Africa, claimed to be a victim of violations of articles 7 and 10 of the International on Civil and Political Rights (“Covenant”). In particular, McCallum alleged that he was physically abused, raped, and subject to other ill treatment by South African prison authorities during an incident in July of 2005. McCallum alleged that he was exposed to inhuman and degrading conditions while in detention by being forced to lie down in urine, feces, and blood. McCallum also alleged that the authorities subsequently denied him HIV testing, kept him incommunicado for one month, and deprived him of access to medical care, a lawyer, and his family during that time. McCallum alleged that his conditions amounted to a deprivation of liberty and that his claims had not been investigated despite the fact that he had copies of letters and faxes that he had submitted to the proper authorities requesting that they investigate the 2005 incident.

McCallum lodged a complaint to the prison authorities following the incident, but they did not accept his complaint. However, several months later, an inspector of the South African Police Service recorded McCallum’s statement, and promised to open an investigation into the incident. Ultimately, in May of 2006, McCallum commenced a civil suit against the Department of Correctional Services. He later withdrew the suit and submitted his claim to the United Nations Human Rights Committee.

### Decision and Reasoning

The Committee found that South Africa had violated article 7 of the Covenant, read in conjunction with article 2, paragraph 3, because the state party had an obligation to provide McCallum with an effective remedy, including an investigation of his claims, prosecution of those responsible, and full reparations where appropriate. The Committee found that South Africa had violated article 7, which prohibits cruel, inhuman, or degrading treatment, because the state party neither addressed McCallum’s allegations of ill-treatment nor conducted an independent investigation of the potential involvement of the state party’s warders in McCallum’s alleged ill treatment during the 2005 incident. The Committee further found that keeping McCallum incommunicado for one month without access to a physician, a lawyer, or his family, and denying McCallum access to HIV testing also violated Article 7.

The Committee also found a violation of article 10, paragraph 1, of the Covenant, which requires that all persons deprived of their liberty be treated with humanity and respect, given the more than a month-long delay between McCallum’s request for medical care following the incident and the state party’s response to his request.

### Decision Excerpts

“The Committee notes the author’s detailed description of the incident of 17 July 2005, during which he was allegedly subjected to ill-treatment, as well as his identification by name of five warders who allegedly participated in the incident. It also notes the author’s medical history and press clippings on the incident of 17 July 2005. The Committee observes that in the present case the arguments provided by the author necessitated at the very minimum an independent investigation of the potential involvement of the state party’s warders in the author’s ill-treatment. The Committee considers, therefore, that the author’s allegations not having been addressed by the state party warrant the finding that there has been a violation of article 7 of the Covenant.” Para. 6.4.

“With regard to the author’s complaint that despite several requests to various authorities he was not tested for

HIV, which he feared to have contracted as a result of the incident of 17 July 2005, the Committee finds that the prevalence of HIV in South African prisons, as attested by the Committee against Torture in its concluding observations of the state party's initial report, which had been brought to the Committee's attention by the author, as well as the particular circumstances of the incident of 17 July 2005 warrants the finding of a violation of article 7, of the Covenant." Para. 6.6.

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