



List of Issues for Ghana Prior to Reporting

United Nations Human Rights Committee

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## **I. Authors**

The Wrongful Conviction International Law Task Force (WCILTF) is a global coalition of law professors, attorneys and activists working together to fill the “Innocence Gap” in international law. The WCILTF is supported by a pro bono legal team at the international law firm Proskauer Rose ([www.proskauer.com/](http://www.proskauer.com/)) located in New York City.

In the past twenty-five years, wrongful conviction of the innocent has emerged as a major problem in criminal justice systems around the world. Research indicates that the problem has always existed but has only come to light in recent decades due to forensic advancements allowing for post-conviction DNA testing of crime scene evidence. Wrongful convictions occur because of human limitations in investigation and evidence collection, such as memory weaknesses and malleability (leading to misidentifications by eyewitnesses), unreliable or faulty forensic evidence, false confessions, confirmation bias or tunnel vision on behalf of investigators, inadequate defense lawyering, and many other human problems. Thus, wrongful convictions exist in all legal systems around the world, as all nations use the same types of evidence and investigation techniques regardless of the precise legal procedures employed in their courtrooms.

NGOs called “Innocence Projects” have sprung up around the globe to combat this problem, and now entire networks of innocence projects exist in Asia, Europe, North America and South America. Innocence Projects are often housed at law schools and are operated by law professors and law students. In one member state, for example, more than 3,000 innocent people have been released from prison in recent years due to the work of NGOs like Innocence Projects. Exonerations of the innocent have occurred across the globe in the past three decades.

For a brief video overview of the global problem of wrongful convictions, and the efforts of Innocence Projects to combat the problem, please view: <https://youtu.be/jMATkuFaRU8>

As the innocence movement has developed a global presence in recent years, it has become apparent to legal scholars that an “Innocence Gap” exists in international law. The WCILTF formed to combat this problem and help fill the Innocence Gap. The WCILTF is comprised of more than twenty-five law professors and Innocence Project leaders from across Asia, Europe, North America and South America.

## II. Filling the Innocence Gap

Due to the relatively recent discovery of wrongful convictions, international law covenants and treaties predate awareness of this problem and thus do not speak directly to issue. In recent years, however, the United Nations Human Rights Committee (HRC) has identified key rights to the benefit of incarcerated person claiming innocence to be derived from the right to a fair trial and other existing rights. For example, in *Abdiev v. Kazakhstan*, 2023, the HRC stated that *the right of incarcerated persons to re-open a criminal case in order to present new evidence of innocence after conviction and appeal have concluded, in order to achieve exoneration and freedom, is essential to the right to a fair trial under Article 14(1) of the ICCPR*. Similarly, on October 3, 2023, in Concluding Observations on the Fifth Periodic Report of the Republic of Korea, the HRC observed that South Korea should “provide adequate legal and financial assistance to enable individuals sentenced to death to *re-examine convictions on the basis of newly discovered evidence, including new DNA evidence*.” Likewise, on July 25, 2024, in Concluding Observations on the Second Periodic Report of Maldives, the HRC expressed concern “about the lack of information on the existence of a procedure enabling individuals sentenced to death to seek a review of their convictions and sentences based on newly discovered evidence of their innocence, including new DNA evidence, and, if wrongfully convicted, to provide them with compensation.” The HRC recommended that Maldives take all necessary measures to ensure that “death sentence can be reviewed based on *newly discovered evidence of their innocence*, including new DNA evidence, adequate legal and financial assistance is provided to enable this review and, *if wrongfully convicted, individuals have access to effective remedies*, including compensation” para. 28(e). See Brandon Garrett, Laurence Helfer and Jayne Huckerby, *Closing International Law’s Innocence Gap*, S. Cal. L. Rev. 95 (2021), available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3803518#](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3803518#).

## III. Rights of Innocent Incarcerated Persons in Ghana

Based on the WCILTF's research, we believe Ghana has a legal mechanism for exoneration based on new evidence of innocence. However, there are significant concerns about the accessibility and effectiveness of these mechanisms. Although procedures for appealing based on new evidence exist, practical barriers, such as a lack of legal literacy, the absence of legal representation, and systemic delays, often render them ineffective for the average incarcerated individual.

Many defendants in Ghana face pressure to plead guilty even when innocent, often due to fears of indefinite pretrial detention, poor prison conditions, or misinformation provided by law

enforcement. Research has shown that guilty pleas are frequently entered without the benefit of legal counsel, leading to wrongful convictions that are extremely difficult to overturn. Moreover, guilty pleas limit available grounds for appeal, exacerbating the risk of innocent individuals remaining incarcerated without meaningful remedies.

Although post-conviction DNA testing is legally permitted, there are no clear regulations mandating the proper long-term preservation of biological evidence. Without consistent standards and enforcement, biological evidence critical for proving innocence may be degraded or lost.

Access to police and court records is theoretically permitted under Ghana's Right to Information Act. Yet, the practical exercise of these rights is often hampered by bureaucratic resistance and resource constraints, especially when politically sensitive cases are involved.

Disclosure obligations in Ghanaian criminal proceedings are supported by constitutional provisions and judicial interpretations. However, enforcement remains a serious problem. Despite clear rules requiring pre-trial disclosure of exculpatory evidence, the burden remains on defendants to demand such disclosures, and remedies for noncompliance are limited.

While the Constitution provides for compensation for wrongful convictions, accessing such remedies is complex and often discretionary. Financial compensation is rare and subject to stringent evidentiary and procedural barriers.

Recent legal reforms have introduced requirements for audio or video recording of police interrogations, and eyewitness identification procedures are outlined in police standing orders. However, implementation is inconsistent, and these protections are not universally applied in practice, further increasing the risk of wrongful convictions.

Overall, while Ghana has important legal frameworks in place on paper, systemic issues such as under-resourced public defense, poor enforcement of rights, and procedural obstacles mean that wrongfully convicted individuals face severe hurdles in seeking justice.

#### **IV. Questions to Ghana**

1. Does Ghana have a legal procedure for post-conviction revision or re-opening of convictions based on new evidence of innocence?
2. Have courts in Ghana fairly and objectively applied existing legal procedure for post-conviction revision or re-opening of convictions based on new evidence of innocence?
3. If so, is there a deadline by which such a motion must be brought, or may an incarcerated person bring such a legal motion at any time?
4. If so, what is the legal standard that the incarcerated person must meet to reopen the case?

5. Have any post-conviction motions presenting new evidence of innocence been successfully granted by a court in Ghana, resulting in the incarcerated person's exoneration and freedom? Have any such motions been denied by courts in Ghana?
6. Does Ghana have a law allowing incarcerated persons to petition for post-conviction DNA testing of crime scene evidence to prove innocence and seek relief?
7. Does Ghana have a legal procedure requiring biological evidence collected from the crime scene to be preserved for future DNA testing?
8. If so, how long must the biological evidence be preserved?
9. Does Ghana have a "sunshine law" or "public records law" granting defense attorneys, NGOs, journalists or incarcerated persons access to police files and documents of an incarcerated person's case post-conviction?
10. Does Ghana have a legal standard requiring the police and prosecution to disclose to the defense pre-trial any exculpatory evidence or other information helpful to the defense or that might lead to new avenues of pre-trial investigation that might be conducted by the defense?
11. If so, what is the legal standard pertaining to this disclosure requirement?
12. Does Ghana have a law providing compensation to the wrongfully convicted after exoneration and release from prison? If so, what do such laws provide?
13. Does Ghana have laws or regulations requiring the recording of police interrogation of suspects? If so, please outline the requirements of such laws or regulations.
14. Does Ghana have laws or regulations ensuring that police identification procedures for eyewitnesses adhere to best practices devised by the scientific community, such as the double-blind eyewitness identification requirement? See <https://www.ojp.gov/ncjrs/virtual-library/abstracts/double-blind-sequential-police-lineup-procedures-toward-integrated>
15. Does Ghana have an independent court ruling on petitions for review?

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