



List of Issues for Jordan 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/) 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?si=fO0wXGhPr-oCyhBA>

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#

III. Rights of Innocent Incarcerated Persons in Jordan

Process for Review of Exonerating Evidence

Based on the research of the WCILTF, it is our belief that Jordan does not have a legal mechanism for exoneration based on new evidence of innocence; however, there are avenues of post-conviction relief that individuals may pursue. According to Article 292 of the Code of Criminal Procedure (“CCP”), if new evidence emerges that could prove an individual’s innocence, or if significant procedural violations occurred during their trial, an individual may request a retrial. These petitions are reviewed by the Minister of Justice and the Court of Cassation; the latter then has the authority to overturn convictions or order new trials (CCP Article 294). Such requests must be submitted in written form, either (1) showcasing new events happened or new documents emerged which were not known during the trial of the case, provided that such events or documents would have proven the innocence of the convicted person, or (2) proving that a witness who testified against the convicted individual was later convicted of perjury (CCP Article 292).

Recognition for the Wrongfully Convicted

Article 298 of the CCP recognizes certain rights of the wrongfully convicted; to assist in curing the individual’s reputational damage, the new judgment announcing the convicted person’s innocence upon retrial shall be hung at the court’s entrance, other public places where the original ruling was publicized, and the individual’s domicile. The new judgment must also be published in Jordan’s Official Gazette – a nationally circulated newspaper – and in two local newspapers, with Jordan bearing all publication costs.

Absence of Remaining Protections

While the CCP has these basic provisions for the legal process, it does not provide compensation or remuneration for the wrongfully convicted. Further, our research has only shown one instance where an individual’s rights were exercised – a Jordanian cleric convicted in absentia on terrorism-related charges, Abu Qatada al-Filistini, exercised his legal right to a retrial under Jordanian law upon his return to Jordan in 2013. In subsequent retrials, he was acquitted of the charges against him.

However, publicly available information or comprehensive data on retrial requests under Article 292 is scarce. This lack of information makes it challenging to assess the effectiveness and accessibility of this legal remedy for wrongfully convicted individuals in

Jordan. Additionally, we could find no evidence of domestic law offering the right to incarcerated persons of DNA testing of crime scene evidence. There were also no laws in effect requiring the production of case files for post-conviction investigations; the preservation of crime scene evidence; the pre-trial disclosure of evidence from one party to the other; and no laws regarding best practices for law enforcement when conducting lineups, recording interrogations, or identification proceedings.

With the exception of Abu Qatada al-Filistini, one case that took places over a decade ago, there does not seem to be a working mechanism in Jordan which allows for innocent incarcerated persons to achieve exoneration and freedom.

IV. Questions to Jordan

1. Does Jordan have a legal procedure for post-conviction revision or re-opening of convictions based on new evidence of innocence?
2. If so, can you outline what that process looks like post-trial? 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?
3. If so, what is the legal standard that the incarcerated person must meet to re-open the case?
4. What is the approximate percentage of individuals who have access to legal counsel during trial proceedings?
5. What is the approximate percentage of individuals who work with counsel post-conviction/have access to counsel post-conviction?
6. Have any post-conviction motions presenting new evidence of innocence been successfully granted by a court in Jordan, resulting in the incarcerated person's exoneration and freedom? Have any such motions been denied by courts in Jordan?
7. Does Jordan have a law allowing incarcerated persons to petition for post-conviction DNA testing of crime scene evidence to prove innocence and seek relief?
8. Does Jordan have a legal procedure requiring biological evidence collected from the crime scene to be preserved for future DNA testing?
9. If so, how long must the biological evidence be preserved?
10. Does the court of cassation in Jordan preside over evidence for exoneration?
11. Does Jordan 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?
12. Does Jordan 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?

13. If so, what is the legal standard pertaining to this disclosure requirement?
14. What is the time period that law firms in Jordan are required to retain the case files of incarcerated people they have represented?
15. Does Jordan have a law providing compensation to the wrongfully convicted after exoneration and release from prison? If so, what do such laws provide?
16. Does Jordan have laws or regulations requiring the recording of police interrogation of suspects? If so, please outline the requirements of such laws or regulations.
17. Does Jordan 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>

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