



List of Issues for New Zealand Prior to Reporting

United Nations Human Rights Committee

Submitted on January 6, 2025

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 New Zealand

The Legal Framework for Addressing Wrongful Convictions

New Zealand has made notable progress in addressing wrongful convictions with the establishment of the Criminal Cases Review Commission (CCRC) in 2020 under the Criminal Cases Review Commission Act 2019. As an independent entity, the CCRC examines potential miscarriages of justice and refers cases to the Court of Appeal if significant issues are identified. Unlike the Royal Prerogative of Mercy, its predecessor, the CCRC operates with greater transparency and impartiality, ensuring its processes remain independent of government influence.

The creation of the CCRC addressed long-standing issues, such as inefficiencies in the previous system and the overrepresentation of Māori and Pacific peoples among wrongful convictions. Recent data highlights systemic flaws, with nearly 900 wrongful convictions reported in the last decade. High-profile cases, including those of Teina Pora and Alan Hall, exposed weaknesses such as coercive police tactics and evidence mishandling. However, the CCRC's limited authority—it cannot quash convictions or grant pardons—has drawn criticism from advocates who argue for stronger measures to ensure justice.

Compensation for Wrongful Convictions

The **2023 Compensation Guidelines for Wrongful Conviction and Detention** provide a discretionary framework for compensating individuals who have been exonerated. Compensation includes base annual rates of \$150,000 for imprisonment and \$75,000 for home detention, adjusted for factors such as loss of livelihood, restrictive bail, and reintegration costs. Additional allowances may cover legal fees and other pecuniary losses, while transition funds aim to support exonerees' reintegration into society.

However, the absence of a legal right to compensation remains a major critique. Decisions are left to the discretion of the government, and applicants must waive their rights to pursue further claims against the Crown upon accepting compensation. Critics argue that this system limits justice for exonerees, as it does not fully address the harms caused by wrongful convictions.

Challenges and Calls for Reform

While New Zealand has made notable advancements, challenges persist in ensuring fairness and accountability in its justice system. Critics point to the judiciary's historical reluctance to overturn convictions and the discretionary nature of compensation as

barriers to justice. Concerns about the independence of the CCRC have also surfaced, particularly following political appointments that could undermine its impartiality.

Advocates emphasize the need for systemic reforms, including mandatory evidence preservation, access to DNA testing, and clearer procedures for reviewing convictions. These measures would not only prevent future wrongful convictions but also provide a more robust safety net for those already affected. Addressing these gaps is crucial for fostering public confidence in New Zealand's justice system and ensuring equitable outcomes for all.

IV. Questions to New Zealand

1. Does New Zealand have effective legal provisions for revisiting convictions, allowing incarcerated persons claiming innocence to overturn their sentences based on new evidence?
2. Have courts in New Zealand 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 re-open the case?
5. Have there been any incarcerated persons exonerated and freed based on existing legal provisions referenced above? Have any such motions been denied by courts in New Zealand?
6. Does New Zealand maintain a DNA database related to criminal arrests or convictions? If so, which offenses qualify for inclusion in the database?
7. Whose DNA profiles are included in such a database? How long are DNA profiles retained in such a database?
8. Does New Zealand have a law allowing incarcerated persons to petition for post-conviction DNA testing of crime scene evidence to prove innocence and seek relief?
9. Does New Zealand have a legal procedure requiring biological evidence collected from the crime scene to be preserved for future DNA testing?
10. If so, how long must the biological evidence be preserved?
11. Does New Zealand 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 New Zealand 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. Has New Zealand ever provided compensation to a wrongfully convicted person?
15. Does New Zealand have laws or regulations requiring the recording of police interrogation of suspects? If so, please outline the requirements of such laws or regulations.
16. Does New Zealand 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>

This document created by the following members of the WCILTF:

Barry Scheck
Co-founder, Innocence Project
bscheck@innocenceproject.org

Noa Mishor
noami@justice.gov.il

Maggie Livingstone
Associate
MLivingstone@proskauer.com

To contact the WCILTF generally, please email:

Prof. dr. mr. G.J. Alexander Knoops.
Advocaat/Attorney at law
Professor Politics of International Law
alex@knoopsadvocaten.nl

Professor Mark Godsey
University of Cincinnati College of Law
Director, Ohio Innocence Project
markgodsey@gmail.com