



List of Issues for Sweden Prior to Reporting
United Nations Human Rights Committee
Submitted on 28 April 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 it, 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 the 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 Sweden

Based on our research, Sweden has a relatively robust legal mechanism “on paper” for exoneration based on new evidence of innocence. The Swedish Code of Judicial Procedure provides for the re-opening of a previous conviction and imposes no time limit on any petition for a new trial or how many applications may be made with respect to the same applicant. Indeed, according to the Swedish Code of Judicial Procedure (SFS 1942:740, hereafter CJP), Ch. 58, section 2, point 4: “After a verdict in a criminal case has entered into final force, relief for a substantive defect in the content of the verdict may be granted for the benefit of the defendant, if a circumstance or item of evidence that was not presented previously is invoked and its presentation probably would have led to the defendant's acquittal or that the offense would have been linked to a sanction provision milder than that applied, or if in view of the new matter and other circumstances, extraordinary reasons warrant a new trial on the issue whether the defendant committed the offense for which he was sentenced.”

To reopen the case, the incarcerated/convicted person must meet the requirements of novelty, strength, and impact. Based on the data available from the period of 2000-2020, most applications approved for a new trial due to a new item or items of evidence or new circumstances resulted in acquittals, although the data from 2010-2020 show that of all the applications filed, less than 0.01% were approved for a new trial. Attorneys engaged in this work in Sweden report that while the procedures appear robust on paper, the system is very reluctant to admit mistakes and overturn prior convictions. The provisions are thus strictly construed against the incarcerated person.

Procedurally, post-conviction DNA testing is allowed, but there is no requirement to preserve biological evidence from the crime scene when there is a guilty verdict. However, in spite of the non-existing legal regulation, the National Forensic Center – which is the only criminal forensic laboratory in Sweden doing DNA tests and part of the Police Authority– has “on its own” preserved all the DNA samples that they have tested or tried to test, since the year 2000. The problem is that nobody knew about this until 2022, and there is no information available for the convicted regarding which samples they have, nor do they disclose this information to anyone other than the prosecutors and the courts. This is problematic because as DNA testing has become more sensitive, results could be obtained now in cases that could not be obtained previously.

Furthermore, access to police files and documents of an incarcerated person’s case post-conviction is allowed by law, though in reality, it is difficult to realize, as the system is resistant to such efforts. The Public Access to Information and Secrecy Act provides the opportunity to apply access to the whole case file post-conviction in order to find new

evidence and/or circumstances for a petition to re-open the case. Still, according to reports of attorneys in Sweden, the Swedish Police Authority is extremely reluctant to grant such applications post-conviction.

Regarding eyewitness identification procedures, Sweden does not have special laws ensuring best practices, but rather, only guidelines. However, the documentation of the procedures is insufficient, which makes it impossible to say anything certain about the application of the guidelines in the practice. Some studies have been conducted, concluding that practice is not following the guidelines, especially the double-blind requirement. But we do not know for certain.

IV. Questions to Sweden

1. Attorneys in Sweden report that while Sweden has legal procedures to correct wrongful convictions, prosecutors and authorities are reluctant to admit mistakes, and thus, the procedures are not beneficial to the innocent in practice. Statistics back up these claims. What amendments to legal procedures can be afforded to ensure a robust mechanism in practice for the exoneration of the wrongfully convicted?
2. Does Sweden have a law requiring the preservation of DNA evidence from crime scenes post-conviction?
3. Does Sweden have a mechanism to inform incarcerated persons whether DNA from their case has been preserved by the National Forensic Center, such that they might pursue post-conviction DNA testing with newer, more advanced forms of DNA testing?
4. Attorneys in Sweden report that the police rarely disclose police files post-conviction under the Public Access to Information and Secrecy Law. Are amendments to the law necessary, and what amendments to the law would provide for more robust public access?
5. Does Sweden have any laws or regulations requiring best police practices in obtaining statements and identifications from eyewitnesses to crimes?
6. Do Swedish authorities maintain statistics on how police departments conduct eyewitness identification procedures?

This document was created by the following members of the WCILTF:

Minna Gräns

Shonnie Sun

To contact the WCILTF generally, please email:

Prof. dr. mr. G.J. Alexander Knoop.
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