



List of Issues for Antigua & Barbuda 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 academics, lawyers 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 defence 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 academics 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 Antigua & Barbuda

Process for Review of Exonerating Evidence

Antigua and Barbuda appears to have a few of the necessary legal provisions in place, but like with many countries, the legal landscape for post-conviction innocence litigation is generally quite barren. If someone wants to challenge or seek a revision of a final and binding criminal court judgment, the process is generally quite limited, as final judgments of criminal courts are, by their nature, difficult to challenge. However, there are certain legal mechanisms available:

According to Section 39 of the Eastern Caribbean Supreme Court Act, a person convicted on indictment may appeal under the Act to the Court of Appeal. The appellant typically has 14 days (section 48(1)) from the date of conviction or sentencing to file a notice of appeal. This can be extended under exceptional circumstances.

If new evidence comes to light after the final judgment, this can potentially form the basis for an appeal. In cases involving new evidence, the court may allow an extension of time to appeal, but you must demonstrate that the new evidence is crucial and could have had a significant impact on the outcome of the trial. Under section 56(b) the Court of Appeal has the power to extend the time within which notice of appeal may be given.

We have interviewed criminal law experts in Antigua & Barbuda who have informed us that the system in place does not adequately allow for post-conviction review based on new evidence of innocence. Furthermore, legal experts in Antigua & Barbuda are aware of no cases where an incarcerated person has successfully challenged a conviction based on new evidence of innocence. According to local experts, there are no public record laws that allow NGOs or lawyers to obtain police files re-investigate a case where an incarcerated person claims wrongful conviction, no DNA testing laws that allow incarcerated person to obtain DNA testing of crime scene evidence, no laws or regulations requiring the prosecution to make pretrial disclosure to the defense of any favorable information or evidence, and no compensation laws for the wrongfully convicted.

Our independent research confirms the same. We could find no evidence of domestic laws offering the right to incarcerated person to DNA testing of crime scene evidence, no laws requiring the pre-trial disclosure by the prosecution of evidence to the defence, no public records laws requiring the government to produce case files for post-conviction investigation, no law requiring the preservation of crime scene evidence, and no laws regarding best practices for the police in recording interrogations or conducting photo line-ups of eyewitnesses.

In sum, there does not appear to be a working mechanism in Antigua & Barbuda to allow for innocent incarcerated persons to achieve exoneration and freedom.

#### IV. Questions to Antigua & Barbuda

1. Have courts in the Antigua & Barbuda fairly and objectively applied existing legal procedure for post-conviction revision or re-opening of convictions based on new evidence of innocence?
2. 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?
3. If so, what is the legal standard that the incarcerated person must meet to re-open the case?
4. 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 the Antigua & Barbuda?
5. Does the Antigua & Barbuda maintain a DNA database related to criminal arrests or convictions? If so, which offenses qualify for inclusion in the database?
6. Whose DNA profiles are included in such a database? How long are DNA profiles retained in such a database?
7. Does the Antigua & Barbuda 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 the Antigua & Barbuda 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 Antigua & Barbuda have a “sunshine law” or “public records law” granting defence attorneys, NGOs, journalists or incarcerated persons access to police files and documents of an incarcerated person’s case post-conviction?
11. Does the Antigua & Barbuda have a legal standard requiring the police and prosecution to disclose to the defence pre-trial any exculpatory evidence or other information helpful to the defence or that might lead to new avenues of pre-trial investigation that might be conducted by the defence?
12. If so, what is the legal standard pertaining to this disclosure requirement?
13. Has the Antigua & Barbuda ever provided compensation to a wrongfully convicted person?
14. Does the Antigua & Barbuda have laws or regulations requiring the recording of police interrogation of suspects? If so, please outline the requirements of such laws or regulations.
15. Does the Antigua & Barbuda 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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