



List of Issues for Dominican Republic 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 Dominican Republic

Process for Review of Exonerating Evidence

The Dominican Republic 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.

According to Article 428 Subsection IV of the Criminal Procedure Code of the Dominican Republic (“CPCDR”), a request for revision may be filed against a final and binding judgment from any jurisdiction, provided it benefits the convicted person, if new evidence arises post-conviction that demonstrates the criminal conduct did not occur. Such requests must be submitted in a written and reasoned form, either: (1) specifying the applicable legal provisions alongside the relevant new, ideally, documentary evidence; or (2) indicating where such evidence may be obtained (CPCDR Article 430). Requests for revisions due to new evidence of innocence are heard by the Dominican Republic’s Criminal Chamber of the Supreme Court of Justice, which may weigh the new evidence and render a ruling (whether to reject the request, directly issue an acquittal, or order a new trial) without holding a hearing (CPCDR Articles 70, 431, 432, and 434). The timeline for such a request is unclear, but such requests may be filed repeatedly if new evidence comes to light (CPCDR Articles 429 and 435).

Recognition and Compensation for the Wrongfully Convicted

The Dominican Republic, Articles 255-258 of the CPCDR recognize the right of wrongfully convicted and subsequently exonerated individuals to receive compensation based on one day of the base salary of a judge for each day of unjust imprisonment. Notably, acceptance of such compensation prevents the exoneree from filing additional claims to seek greater compensation through other legal avenues (CPCDR Article 256). Additionally, if a request for revision results in exoneration, the exoneree may request the publication of the judgment in the Judicial Bulletin and in a nationally circulated newspaper, as well as the restitution of sums paid for fines, court costs, and damages (CPCDR Article 434).

Absence of Remaining Protections

Many countries have basic provisions for legal process such as those in the CPCDR mentioned above, but the courts rarely employ them in an objective manner, rendering them meaningless. This may be the case in the Dominican Republic. Our research

revealed no instances of these provisions being employed successfully in the Dominican Republic. In addition, 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 defense, 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 lineups of eyewitnesses.

In sum, there does not appear to be a working mechanism in the Dominican Republic to allow for innocent incarcerated persons to achieve exoneration and freedom.

IV. Questions to Dominican Republic

1. Have courts in the Dominican Republic fairly and objectively applied existing legal procedure under the CPCDR 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 Dominican Republic?
5. Does the Dominican Republic 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 Dominican Republic 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 Dominican Republic 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 Dominican Republic 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?
11. Does the Dominican Republic 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?

12. If so, what is the legal standard pertaining to this disclosure requirement?
13. Has the Dominican Republic ever provided compensation to a wrongfully convicted person pursuant to Articles 255-258 of the CPCDR?
14. Does the Dominican Republic 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 Dominican Republic 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:

Ailani Acey
Law Clerk
aacey@proskauer.com

Oren Katz
Associate
okatz@proskauer.com

Camila Calvo
camila@innocenceprojectargentina.org

Manuel Garrido
manuelgarrido@innocenceprojectargentina.org

Micaela Prandi
micaelaprandi@innocenceprojectargentina.org

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