



List of Issues for Zimbabwe 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 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. Issues with the Rights of Innocent Incarcerated Persons in Zimbabwe

Zimbabwe has recently, as of 31 December 2024, abolished the death penalty, which the Taskforce commends. Additionally, it is encouraging that the Chief Justice of Zimbabwe has announced a number of reforms to be introduced in 2025, including a plea-bargaining system to support reducing the prison population. Zimbabwe also has several legal protections to support those who may be wrongfully convicted, including court transcripts, disclosure of exculpatory evidence, and the right to review police files. Nevertheless, the practical implementation of many legal protections in the Zimbabwean criminal justice system is often, in reality, undermining the protections they are

intended to provide, and there are many other significant gaps in legislation and criminal procedural rules that could impact those seeking exoneration and compensation from wrongful conviction.

We provide below a sample of such challenges around existing legal protections or where they are missing.

Legal representation

There is a constitutional right that Zimbabwe must take all practical measures, within the limits of available resources, to provide legal representation in both civil and criminal cases for individuals who require it but cannot afford a lawyer (Section 31 of the Constitution of Zimbabwe).

The reality of “within the limits of available resources” is that legal aid is only provided in murder cases and only once the case has reached court. This means that for the huge majority of cases, the accused will go through arrest, evidence gathering, and all stages of court without legal representation (and in murder cases, there is only the legal aid representation at the trial stage). Further exacerbating the lack of legal representation is that the lawyers assigned to murder cases at court are not criminal law specialists – they can be from any field of law – resulting in an unbalanced courtroom in an adversarial system, where expert prosecution stands against an inexperienced defense.

We understand that criminal trial costs are typically no less than \$3,000 USD. With 40% of the Zimbabwean population living in “extreme poverty,” according to the World Bank in 2022, and the lack of access to legal aid, legal representation is out of reach for the majority of the population, severely impacting the accused and imprisoned.

Moreover, convictions cannot be challenged based on inadequate defense. This, combined with the lack of legal aid, further undermines fair trial rights, leaving those without means particularly vulnerable to miscarriages of justice.

Police audio/video recording

The police interview process is not recorded via any means of audio or video, instead Section 41C of the Criminal Procedure and Evidence Act 9:07 (“CPEA”) stipulates there should be a written record following an individual’s arrest. The lack of an audio or video recording severely limits the accused or imprisoned individuals from being able to challenge the police interrogation they received and whether the evidence gathered was fair or an accurate representation of what they had said.

DNA Testing

Whilst the courts in Zimbabwe have highlighted the conclusive nature of DNA testing to resolve legal disputes (e.g. Mtshingwe v. Moyo HB), this is a theoretical admissibility of DNA evidence and there is no formal mechanism for post-conviction DNA testing. The practical reality is that there are extremely limited resources to gather and submit DNA evidence in the Zimbabwean criminal justice process, and no specific rights for initial or new DNA evidence to be gathered. In the significant majority of Zimbabwean criminal cases there is no DNA evidence.

Identification procedures

The CPEA does not contain provisions mandating police identification procedures for eyewitnesses to adhere to best practices such as double-blind eyewitness identification.

Right to Appeal

The right to appeal is a fundamental safeguard, allowing individuals to challenge a conviction when a Magistrate or Judge has made an error of fact or law (Section 60 of the Magistrates Court Act). This is focused on an allegation that the fact finder erred in fact or in law.

However, in Zimbabwe, the practical ability to exercise this right is severely limited. The appeal from the Magistrates Court to the High Court against conviction should be made within ten days, with a further twenty days allowed to amend the notice of appeal (Rule 101 (2) of the High Court Rules, 2021, as read with Rule 96). This timeframe is exceptionally short, particularly given the severe lack of legal representation, making it nearly impossible for unrepresented defendants to prepare an effective appeal.

The system places too much emphasis on finality, leaving little room to pursue appeal rights in practice. Without adequate time or legal support, the appeal process becomes more of a theoretical safeguard than a meaningful avenue for justice, effectively closing off one of the most crucial mechanisms for correcting wrongful convictions.

Right to Review

There are multiple rights to a review of a conviction in Zimbabwean law. We would like to draw attention to one route in particular - when seeking post-conviction revision based on new evidence of innocence, the legal framework is significantly restrictive. Under Section 10(2) of the Criminal Procedure and Evidence Act (“CEPA”), only the Prosecutor-General has the authority to petition the court for a review of a conviction if compelling new evidence emerges that exonerates the convicted individual, implicates another person, or links the individual to a lesser offense. While this provision allows individuals to submit new evidence to the Prosecutor-General, its practical effectiveness is severely limited. Given the lack of legal representation we understand to be endemic across the criminal justice system for the accused and convicted, the probability of receiving such new evidence is very low and the right to review under this route remains at the complete discretion of the Prosecutor-General (it is drafted at Section 10(2) of CEPA to be “in the opinion of the Prosecutor-General”). We see a particular issue in that this approach hinges on the Prosecutor-General implicitly admitting that the trial prosecutor may have failed to consider certain evidence. Ultimately, we understand this to be a “theoretical option” rather than one that is practiced.

No compensation under Statute

The right to compensation for wrongful conviction is safeguarded under Article 14(6) of the International Covenant on Civil and Political Rights (“ICCPR”) and Section 327 of the Constitution of Zimbabwe renders ratified international treaties and laws binding and enforceable in Zimbabwe. There is also a route to claim special damages for loss of liberty in actions related to unlawful arrest and detention.

Despite this, to our knowledge there has never been a claim for successful compensation under Article 14(6) of the ICCPR. Their main option for compensation is to pursue damages for malicious prosecution under tort law. However, this would require demonstrating that the police had malice

and that the prosecution was false, which is a) a high bar to prove; and b) exacerbated by the prohibitive costs and lack of legal representation for the majority of the population.

IV. Questions to Zimbabwe

1. How is the fundamental right to legal representation under the Constitution of Zimbabwe implemented to ensure the widest possible reach of legal representation? Are lawyers inexpert in the field of criminal law assigned criminal defense cases?
2. Does Zimbabwe have laws or regulations requiring the recording of police interrogation of suspects? If so, please outline the requirements of such laws or regulations.
3. Is there any procedure to record police interviews by audio or video? If no, when will this be introduced and effected in criminal procedure?
4. Does Zimbabwe have laws preventing evidence obtained by way of torture being admissible in the legal justice system? Are any such laws adhered to?
5. Have any post-conviction motions presenting new evidence of innocence been successfully granted by a court in Zimbabwe, resulting in the incarcerated person's exoneration and freedom?
6. More specifically, have there been any incarcerated persons exonerated and freed based following a successful right to review or right to appeal? Have courts in Zimbabwe denied any such motions?
7. How can a Prosecutor-General be challenged if "in their opinion", as set out in Section 10(2) of CEPA, they did not allow the right to review a conviction?
8. Is the time limit of thirty days to apply for the right to review a conviction or right to appeal likely to be changed to allow incarcerated persons to bring such a legal motion at any time?
9. What is the legal standard that the incarcerated person must meet to re-open the case based on new evidence of innocence?
10. Does Zimbabwe maintain a DNA database related to criminal convictions? If so, which offenses qualify for inclusion in the database?
11. Whose DNA profiles are included in such a database? How long are DNA profiles retained in such a database?
12. Does Zimbabwe have a law allowing incarcerated persons to petition for post-conviction DNA testing of crime scene evidence to prove innocence and seek relief?
13. Does Zimbabwe have a legal procedure requiring biological evidence collected from the crime scene to be preserved for future DNA testing?
14. If so, how long must the biological evidence be preserved?
15. Does Zimbabwe 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?
16. Does Zimbabwe 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? For the avoidance of doubt, this should cover all evidence, not only witness statements covered in section 46 of the Criminal Procedure Act 2016.

17. If so, what is the legal standard pertaining to this disclosure requirement?

18. Has Zimbabwe ever provided compensation to a wrongfully convicted person?

19. Does Zimbabwe 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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