



List of Issues for the Bahamas 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 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 The Bahamas

Process for Review of Exonerating Evidence

Based on the WCILTF's research, it appears that the Bahamas does not have clear procedures for reopening convictions based on new evidence of innocence. The judicial system is headed by the Court of Appeal and the Supreme Court, with the additional right of appeal to the London-based Judicial Committee of the Privy Council (JCPC) under certain circumstances. The Supreme Court has unlimited original and appellate jurisdiction in civil and criminal cases based on the Supreme Court Act of 1996.

The JCPC has a history of overturning wrongful convictions in cases where fair trial rights were violated or new evidence cast doubt on the original conviction. It has also overturned wrongful convictions in cases involving flawed DNA evidence, jury bribery, and unreliable forensic evidence.

Although the JCPC has identified and corrected wrongful convictions in The Bahamas, there is no clear timeline or standard for presenting new evidence after conviction in the Bahamian Criminal Procedure Code or the Appellate Code.

Lack of a Public Records Policy

Our research also indicates that the Bahamas do not have a public record policy granting defense attorneys, NGOs, journalists, or incarcerated persons access to police files and documents of an incarcerated person's case post-conviction. Further, the Public Records Act of 2001 does not necessarily distinguish the public records of criminal trials. There is no indication that these are regularly maintained beyond the exhaustion of the legal proceedings.

Lack of a Post—Conviction DNA Petition or Policy

Our research indicates there is no specific mention of post-conviction relief regarding DNA evidence. The Rules of Evidence and Code of Criminal Procedure do not discuss biological evidence or DNA beyond evidence collection. The policies provided by the Royal Bahamas Police Force indicate officers are instructed to preserve evidence to aid with identification by fingerprints, body samples, swabs, and impressions. The policies even go as far as saying, "Biological evidence collected from crime scenes is a crucial part of investigations and is often used for DNA analysis. This evidence, including items like clothing, blood, body fluids, and other samples, is carefully collected and processed to identify potential suspects or link them to a crime."

There is an acknowledgment of the importance of biological evidence in identifying suspects, but there is no focus on ensuring accuracy in proceedings or correcting wrongful convictions in any policy.

Absence of Interrogation Recording Policy

Of most concern, the Bahamas do not have laws or regulations requiring the recording of police interrogations of suspects. Although the Bahamas has recently exonerated several citizens, the wrongful convictions were caused by the interrogation tactics of law enforcement.

The Bahamas have noted the importance of protecting citizens from coercive law enforcement questioning; Section 17 of The Rules on Evidence provides, “no evidence shall be given of any admission made under duress.” Further, Section 20 states, “no confession made by an accused person will be given in evidence once it has been proven that the confession was obtained by oppression. The Prosecution must prove beyond a reasonable doubt that the confession was made voluntarily.”

There are several court cases that indicate the use of recordings of interrogations and their admissibility in court. Yet, there does not seem to be any statute ensuring the recording of these interactions to ensure there are no coercive factors impacting any interview or interrogation.

IV. Questions to The Bahamas

1. Do the Bahamas have a 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 reopen the case?
4. Have any post-conviction motions presenting new evidence of innocence been successfully granted by a court in the Bahamas, resulting in the incarcerated person’s exoneration and freedom? Have any such motions been denied by courts in the Bahamas?
5. Do the Bahamas have a law allowing incarcerated persons to petition for post-conviction DNA testing of crime scene evidence to prove innocence and seek relief?
6. Do the Bahamas have a legal procedure requiring biological evidence collected from the crime scene to be properly stored and preserved for future DNA testing? If so, how long must the biological evidence be preserved?

7. Do the Bahamas 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?
8. Do the Bahamas 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 the defense might conduct? If so, what is the legal standard pertaining to this disclosure requirement?
9. Do the Bahamas have a law providing compensation to the wrongfully convicted after exoneration and release from prison? If so, what do such laws provide?
10. Do the Bahamas have laws or regulations requiring the recording of police interrogations of suspects? If so, please outline the requirements of such laws or regulations.
11. Do the Bahamas 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 was created by the following members of the WCILTF:

Charlie Powers

J.D. Candidate, Class of 2025

University of Cincinnati College of Law

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