

Highlights from ICJ's Handbook on Habeas Corpus:

International law guarantees the right of all individuals deprived of their liberty to an expeditious judicial procedure in which an independent and impartial court reviews the legality of their detention and orders the release of individuals wrongfully detained. This right is commonly referred to as 'habeas corpus'.

In Myanmar under military rule from 1962 until 2008, there was no effective mechanism to challenge the lawfulness of detention before a court. One of the major (and unanticipated) improvements in Myanmar's 2008 Constitution was the reintroduction of the writ of habeas corpus. Since then, the government has passed an "Application of Writs Act 2014" and the Supreme Court has promulgated rules and procedures for its implementation.

The examination of the habeas corpus laws and jurisprudence in Myanmar since 2008 reveals shortcomings in the legislation as well as its current implementation. For example, it suspends applications in areas under declared states of emergency. The suspension of habeas corpus, even under a 'state of emergency,' is inconsistent with international human rights standards. Likewise, restricting the writ application to the jurisdiction of the Supreme Court in remote Nay Pyi Taw severely limits access to the procedure for the people of Myanmar. In fact, the Handbook points out that other remedies akin to habeas corpus are available at the High Courts of the States and Regions but are not used by lawyers.

According to the information available to the ICJ, since 2008, the Supreme Court has not granted the writ of habeas corpus: the Supreme Court has not ordered the respondent-authorities to 'produce the body', nor has it ruled that an arrest or detention was unlawful on any occasion. The few judgments discovered by the ICJ appear inconsistent with both national and international standards.

In order to assist and propel the process of judicial reform and strengthen the protection of human rights, the International Commission of Jurists provides this discussion of the law relevant to the writ of habeas corpus under international law as well as Myanmar's current national law. The following are of particular significance:

- Analysis of international standards for challenging arbitrary or unlawful arrest or detention (including that which results in torture and ill-treatment of detainees);
- Analysis of Myanmar's current legal framework for the Constitutional writ of habeas corpus;
- Analysis of the seemingly forgotten and underutilized procedure for challenging arbitrary arrest and detention (similar to the writ of habeas corpus) under Section 491 of the 1898 Code of Criminal Procedure;
- Analysis of the few publicly available recent petitions for the writ of habeas corpus;
- Analysis of relevant existing precedents (pre-1962) from the Myanmar judiciary's case law on habeas corpus.

The development and implementation of the right to habeas corpus in a manner consistent with international standards is essential to the protection of human rights and the promotion of the rule of law in Myanmar. The Handbook includes a set of recommendations aiming to ensure the effective application of the writ of habeas corpus as well as enhance respect for the independence of the judiciary and protection of human rights and the rule of law in Myanmar.

The key recommendations include:

1. **Legislature:** Revise key provisions of the Constitution, laws and policies pertaining to the writ of habeas corpus, as well as arrest and detention, to ensure their consistency with international standards.
2. **Supreme Court:** Act independently and impartially to uphold the constitutional right to habeas corpus; ensure that the detainee appears before the court and the legality of their arrest and detention is determined; provide reasoned public judgments for all habeas corpus petitions; provide extensive training for Judges on the application of the writ of habeas corpus.
3. **Executive and Attorney General:** Issue a directive to ensure that arrest and detention is carried out in line with international standards and to urge law officers to comply with the writ of habeas corpus procedure; law officers must be present in court, produce the detainee and explain how the detention was carried out in accordance with the law; provide extensive training on the role of the prosecutor in habeas corpus petitions.
4. **Bar Associations and lawyers:** Provide extensive capacity building, support and encouragement for lawyers to challenge arrest and detention as well as to file petitions for the writ of habeas corpus or to use similar procedures under CrPC Section 491.