By late September, the streets of Burmese towns and cities had swelled with popular mass demonstrations expressing the Burmese people’s desire for democracy and basic human rights. These peaceful demonstrations were a legitimate expression of the Burmese people’s frustrations with the lack of political and civil freedoms in their nation and increasing hardships that ordinary Burmese people face in their daily lives. Specifically, the sudden and unannounced gas price hike had compounded the financial miseries of the Burmese population that already suffers with one of lowest economic standards of living in the developing world. The military junta’s decision to unilaterally raise gas prices not only left millions unable even to simply travel to their jobs but also caused the costs of nearly all goods to suddenly soar. As the Foreign Minister of Malaysia stated before the United Nations, these demonstrations were a “justified” response to decades of abuse at the hands of an unelected military dictatorship.

From the legal perspective, these demonstrations were conducted within the bounds of the law. They clearly are not Offences Against the Public Tranquility, as delineated under Chapter VII of the Burma Penal Code. Chapter VII, Subsection 141 states:

An assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is—

First—To overawe by criminal force, or show of criminal force, the Union Parliament or the Government, or any public servant in the exercise of the lawful power of such public servant; or
Second—To resist the execution of law, or of any legal process; or
Third—To commit any mischief or criminal trespass, or other; or
Fourth—By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or
Fifth—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit what he is legally entitled to do.

Clearly, peaceful demonstrations of ordinary Burmese citizens and Buddhist monks expressing their desires for basic human fairness cannot be described as a criminal force or show of criminal force. These people came together in the streets of
Burma to simply request what is their natural right: freedom. The demonstrators did not resist any legitimate execution of law nor did they intend to deprive any other citizen of right or property. Rather, these demonstrations were simply the natural reaction to injustice; namely, to not be silent and show courage in the face of evil.

It is apparent that the mass demonstrations in which ordinary Burmese citizens and Buddhist monks participated were justified and not “unlawful assemblies” under Burmese law. However, for the sake of argument, even if these demonstrations were “unlawful assemblies” under Burmese Law and the military junta was legally authorized to disperse the demonstrators, their actions still cannot be deemed lawful. Pursuant to Chapter IX of the Burmese Code of Criminal Procedure, Subsections 127 – 128, the authorities “may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly”.

Subsection 128 states that if the “assembly does not disperse or it, without being so commanded, it [sic] conducts itself in such a manner as to show a determination not to disperse” the authorities “may proceed to disperse such assembly by force” and Subsection 129 states the authorities “may cause [the assembly] to be dispersed by military force”.

Firstly, it must be recognized that the demonstrators were unarmed civilians and Buddhist monks who did not in any way present a “like[lihood] to cause a disturbance to public peace”. In fact, they represented the public peace: the monks calmly repeated prayers while the civilians linked hands to protect the monks. If anyone caused a disturbance to the public peace, it was the military regime. Furthermore, Subsection 130 adds that “[e]very such officer shall obey such [order to disperse the assembly] in such manner as he thinks fit, but in so doing shall use as little force, and do as little injury to person, and property as may be consistent with dispersing the assembly”. On September 28, 2007 the New Light of Myanmar reported that nine demonstrators had died during the military’s dispersal of the demonstrations; however, on October 1, 2007 the Democratic Voice of Burma (DVB) had a much more reliable and higher number of over 100 dead and over 2,000 arrests. Thus, it is clear in light of the peaceful demonstrations participated in by ordinary Burmese citizens and Buddhist monks that the military’s methods in dispersing the demonstrators were disproportionate and not consistent with the legal mandate of Subsection 130 “to do as little injury as may be consistent with dispersing the assembly”. This point is made all the more vivid by the horrific scene that was viewed all over the world of the unarmed Japanese journalist, Mr. Kenji Nagai, being murdered by a soldier dispersing the crowds. The use of live ammunition against unarmed civilians and Buddhist monks can in no way be deemed proportionate or justified. Rather, the conduct of the military regime in crushing a peaceful and justifiable demonstration, which was not an “unlawful assembly” under Burmese law, must be called what it really is: simply another crime against humanity perpetrated with complete impunity by an illegitimate military dictatorship.

The British Broadcasting Corporation (BBC), the DVB, and the Associated Press (AP), among other international media outlets, have widely cited foreign ministers in Burma for the high numbers of casualties sustained by the peaceful demonstrators during the violent military crackdown. The deaths of these demonstrators, which the military junta openly concedes, are neither justified nor legal under Burmese law or
international law norms. While the high death toll has been widely reported and openly acknowledged, the Junta has conspired to conceal the evidence of these deaths by immediately cremating the remains of the fallen peaceful demonstrators. This act of concealment and destruction of the protestors’ bodies violates Chapter XI, Subsection 201, of the Burmese Penal Code:

“Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment… shall, if the offence with [sic] he knows or believes to been committed is punishable with death, be punished with imprisonment… and shall also be liable to fine”.

Additionally, Subsection 212 states:

“Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from punishment… shall, if the offence is punishable with death, be punished with imprisonment… and shall also be liable to fine.”

Thus, not only has the junta committed crimes by destroying evidence of murder, but it also deprived the grieving families of the basic and traditional rite of properly mourning their dead.

Burmese law requires that the deaths caused by the junta’s violent crackdown of the peaceful protests be investigated and, where wrongdoing is found, that the offenders be prosecuted. The Burma Code of Criminal Procedure, Chapter XIV, Subsection 176, states:

When any person dies while in the custody of the police, and, unless a first information report has been recorded…. the nearest Magistrate empowered to hold inquests shall hold an inquiry into the cause of death, in addition to the investigation held by the police-officer, and in conducting such inquiry he shall have all the powers which he would have in holding an inquiry into an offense. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in the manner hereinafter prescribed for summons cases, and shall come to a finding as to the cause of death.

As previously cited the DVB has reported that over 2,000 demonstrators have been arrested and detained, however none of these arrests or detentions have been made in accordance with Burmese law or any norm of international law. Pursuant to Burmese Criminal Procedure Law, for an arrest to be lawful, the arresting officer must first obtain an arrest warrant. Under Burmese Criminal Procedure Law Chapter V, Subsection 54, an arresting officer may make a warrant-less arrest as delineated:
In regards to the arrest of the peaceful demonstrators, there was no reasonable suspicion that these demonstrators had committed cognizable criminal offenses nor was there any credible information that these demonstrators had partaken in criminal acts. Thus, the arrests of these peaceful demonstrators cannot be deemed lawful and it was instead the junta’s conduct that was illegal under Burmese law. Additionally, Chapter V of Burmese Criminal Procedure Law, Subsections 60 - 62, state:

60. A police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before the officer in the charge of a police-station.

61. No police-officer, shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to [the police-station, and from there to the Magistrate’s Court].

62. Officers in charge of police-stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Thus, in detaining demonstrators without warrants and not bringing the detainees before the Magistrates, the junta has ignored the basic tenets of the Rule of Law and violated Burmese law and every norm of international law at every turn. Simply, the junta’s actions in arresting and detaining the peaceful demonstrators cannot be described as, in the words of the Burmese Foreign Minister, “exercised in the utmost discretion” but rather are the actions of criminal thugs.

It has been widely reported in the international media that the military has raided monasteries, searched and beaten Buddhist monks, as well as detained the monks in the monasteries like prisoners. The military’s action in attacking monasteries violates Burmese Penal Code Chapter XV of Offenses Relating to Religion Subsection 295, which states:
Pursuant to Burmese Criminal Procedure Law Chapter VII B.-Search Warrants, a search warrant is required to search the premises and belongings of those accused of criminal offenses. Firstly, one must ask what crimes these Buddhist monks have been accused of that would even permit the issuance of a warrant to search the monasteries. Secondly, it is clear that the searches of these monasteries were conducted unlawfully because they were conducted without the issuance of any search warrant. Rather, these searches were criminal trespasses on behalf of the military and clearly demonstrate the junta’s utter lack of reverence for the religion it espouses to serve.

In conclusion, the acts perpetrated against the peaceful demonstrations in which ordinary Burmese civilians and Buddhist monks participated were simply crimes and unjustifiable in any manner. The demonstrations were the spontaneous result of a people’s exhaustion with suffering under the oppression of a cruel illegitimate regime and were completely justified. These peaceful demonstrations cannot be described as “unlawful assemblies” and therefore the junta’s crushing of these legitimate protests must be deemed crimes against humanity and condemned by all nations who uphold justice.

The Burma Lawyers’ Council, on behalf of the people of Burma, demands:

- That the international community along with democratic groups of Burma conduct an international and independent investigation of the Burmese military junta’s violent crackdown of the peaceful demonstrations.

- That those found to have committed criminal acts against Burmese civilians and Buddhist monks and those responsible for ordering these actions be held to account for their crimes consistent with Burmese law and international law.

- That those who have been found to have perpetrated these criminal acts compensate the victims and the families of the victims.

- That all political prisoners in Burma be released immediately.

- That true and genuine reconciliation processes begin in Burma immediately.

- That those responsible for past crimes against humanity, war crimes, and genocide in Burma be brought to justice and their impunity ended.

- That those who have been found to have perpetrated these past criminal acts compensate the victims and the families of the victims.

- That the people of Burma be permitted to live free of oppression and be able to choose democracy.

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Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class or persons with the intention of thereby insulting the religion of any class of person or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment… or with fine, or with both.