When speaking about the rule of law, what kind of the rule of law are we talking about? Does it mean any “law” will do, no matter what kind of law it is? Are we required to respect and accept the rule of that law?

The common understanding of the rule of law really means the rule of just law, not unjust law. Unjust laws subvert the peoples aspirations and the rule of law while they prevail. Nelson Mandela, for example, denounced the legal system apartheid in South Africa as one which served to protect racial discrimination, not the rights of people under the law.

The kind of law emanating from closed-door discussions by a handful of people in power whose sole objective is strengthen or perpetuate their grip or, power totally ignores the peoples desires and is far from being a just law.

Although promulgated during the British colonial period, the Burmese Criminal Laws, Criminal Proceedings and Civil Laws are believed by most people in Burma to be systematic, correct, just, and acceptable. Those laws have been used from the time of independence throughout the era of parliamentary democracy until today.

The Burmese Criminal Proceedings contain provisions regarding arrest, request for detention, sending to court, prosecution, release with re-arrest option, unconditional acquittal, and interrogation. The police can make an arrest only with an arrest warrant properly issued by the court, except in exceptional cases hut, even then, according to law. The police can detain a person for only 24 hours after arrest. If the interrogation cannot be completed within 24 hours and further detention is needed, Article 167 of the Burmese Criminal Proceedings states that the police must bring the accused before the court and petition the court for a detention order. If the court decides that further detention is warranted, up to 30 days of further detention can be imposed on an accused person whose alleged of-
fence incurs a jail term of 7 years and above, and IS days for those who receive less than 7 years sentence. Detention beyond these periods is not permitted. If not prosecuted after the detention period, the accused must be fired.

Being arrested is, of course, the ultimate deprivation of a person's liberty and the law is very strong on the subsequent prohibitions. While the law authorises the police to arrest and detain people, the law also authorises a fast release of those arrested without sufficient evidence.

During the period of rule by the Burmese Socialist Program Party, contrary to the aforementioned principles, the military dictators issued a Law Of Protection Against The Danger Of Disturbance And Destruction Of The Nation. The real objective of that law was to empower the ruling military junta to arrest and detain anyone suspected of plotting against them. A separate law for dealing with the cases of rebellion against the nation was not needed as Article 121 of the Criminal Law already contained such a clause. The ruling juntas have continued to abuse their power by using this law for over 20 years. They arrest and jail anyone on the slightest suspicion of opposition, regardless of evidence.

The 1975 Law Of Protection Against The Danger Of Disturbance And Destruction Of The Nation, issued by the Burmese junta clearly conflicts with the Criminal Proceedings. The 1975 law provides the police with the power to continue to detain the accused beyond 24 hours without the need to obtain a further detention order from the court. It is in breach of the rule of law and constitutes a serious violation of human rights. Any decision to detain an accused person beyond 24 hours should not be one for the police, but a determination for the court.

An order from the three-person Central Committee (consisting of interior minister as the chairman, and defence and foreign ministers as members) who oversee this part of the law, provided the police in effect with a standing order to enable them to detain suspects for a period of 3 years without formally charging them and bringing them before the court. As the Central Committee is made up of the top echelons of the ruling Junta, the police can obtain a detention order easily and quickly whenever they want to arrest and detain anyone.

This “law” is implemented. The police can and do detain suspects for up to 3 years without allowing them access to a lawyer. Daw Aung San Suu Kyi has been put under house arrest by the same law and the same Central Committee. From the time of BSPP junta to the SLORC junta (now SPDC), thousands and thousands of innocent Burmese have been arrested and detained under this same law and the same Committee author-
ises their detention.

Documentation exists to demonstrate that people arrested and detained under this law are subject to more torture than ordinary prisoners. Countless of people have died, many have suffered mental breakdown, and innumerable others (particularly female detainees) have had their futures completely ruined from tortures while in detention.

This is not the rule of law.

The rule of law devoid of justice is not the rule of law at all, and in Burma’s case, it is the rule of the militant.

As long as the rule of law is absent from Burma a tragic situation for the Burmese people will be perpetuated, as uncontrolled violations of human rights by the ruling junta continue to persist at this present moment.