

The Myanmar Junta Is Not the Legitimate Government of Myanmar

By any standard, **the junta (the State Administrative Council, SAC) is not a legitimate government and should not be recognized, or engaged with, as such.** The SAC lacks effective control of the country, has no democratic or constitutional legitimacy, and cannot stake a claim to being the legitimate representative of the people of Myanmar.

The Special Rapporteur urges Member States to deny the SAC opportunities to propagandize legitimacy at every opportunity; renounce the SAC's planned sham elections; create a working coalition of Member States to establish and enforce strategic, coordinated sanctions; provide robust humanitarian aid and support for the people of Myanmar; recognize the National Unity Government (NUG) as the legitimate representatives of the people of Myanmar; and provide aid and support to the NUG and Ethnic Resistance Organizations supporting the pro-democracy movement.

“**The SAC's military coup was illegal, and its claim as Myanmar's government is illegitimate.**”

Photo: Supporters of the National Unity Government march with an anti-junta banner in Yangon, Aug. 20. © Radio Free Asia



Constitutional Legitimacy

The SAC's claim that “The legitimacy of the State Administration Council is unquestionable as it was formed in accordance with the State Constitution” is patently false.

The military failed to follow the 2008 constitution by unconstitutionally removing President Win Myint and appointing the unelected military-appointed Vice President as Acting President. The SAC's claim that the actions of legally appointed election officials and the duly elected Parliament “may cause the loss of sovereignty” by refusing to further investigate the military's unfounded claims of voter fraud is groundless.

Democratic Legitimacy

The SAC can make no claim to democratic legitimacy, i.e., representing the will of the people as expressed through elections. **The junta's leader, Min Aung Hlaing, has never run for public office, and the military's proxy party, the USDP won only 33 of the 476 contested seats in the Union Parliament.**

The SAC has been given no authority by the people of Myanmar, as expressed through elections, to govern the country.

EFFECTIVE CONTROL

The SAC has cannot meet the internationally accepted criteria of “effective control”:

- 1** control over the greater part of Myanmar's territory,
- 2** habitual obedience of the mass of the population,
- 3** a reasonable prospect of permanence, and
- 4** compliance with obligations under international law.



The SAC lacks control over all or most of the territory of Myanmar. PDFs, many acting under NUG control, and EROs are effectively challenging the Myanmar military and expanding control.

The SAC has no claim to habitual obedience of the masses, evidenced by widespread armed resistance to its attempted rule, protests, strikes, and boycotts.

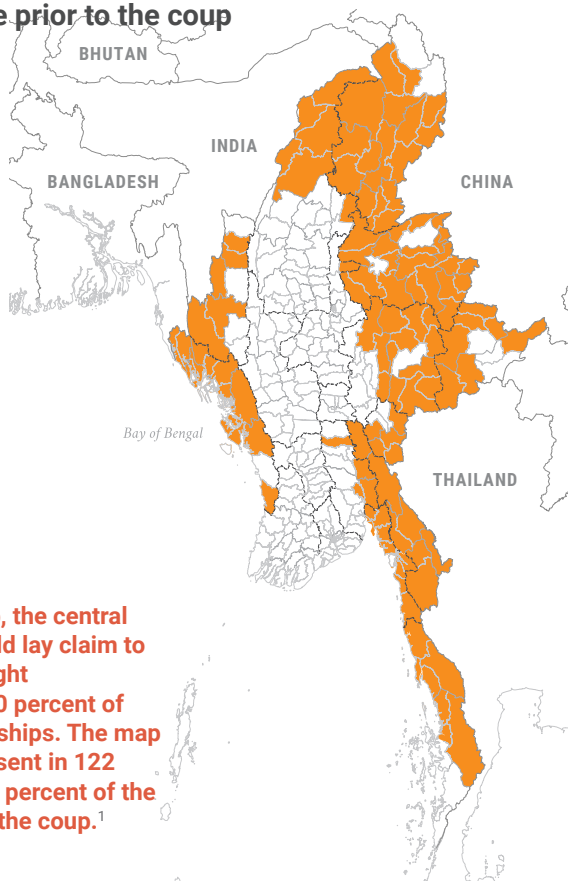
The SAC's sustainability and its permanence are gravely in doubt, due to the widespread conflicts and failure to administer the country.

Finally, it has manifestly failed to abide by its international obligations.

EFFECTIVE CONTROL

ERO presence prior to the coup

■ ERO presence



Prior to the coup, the central government could lay claim to controlling outright approximately 60 percent of Myanmar's townships. The map shows EROs present in 122 townships, or 37 percent of the country, prior to the coup.¹

ERO presence after the coup

■ ERO presence



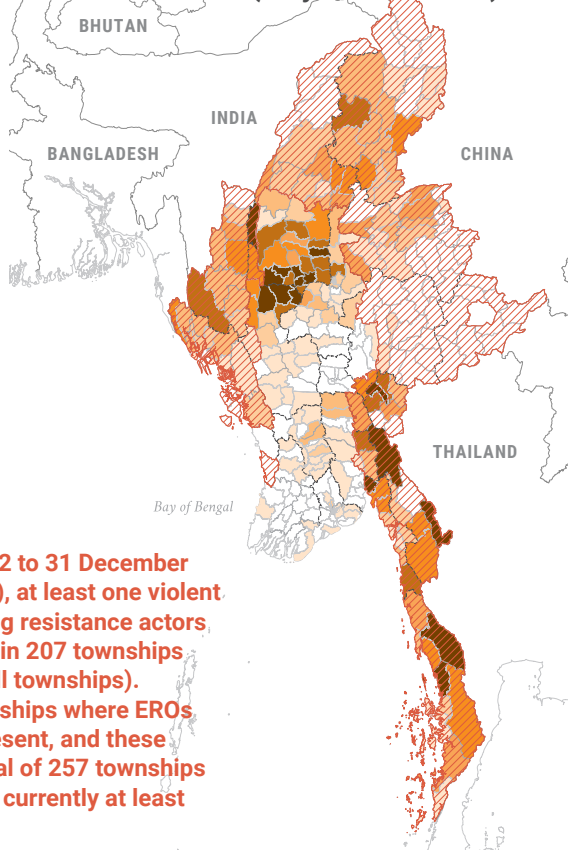
Following the coup, EROs were present and active in at least 145 townships.

Armed resistance conflict areas (July to Dec. 2022)

▨ ERO Presence

Violent incidents

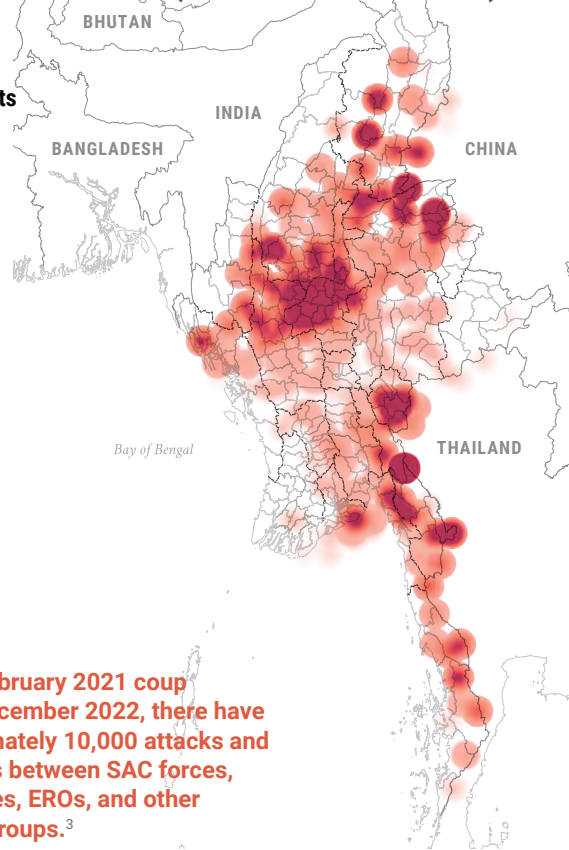
- 1 - 2 weeks
- 3 - 5
- 6 - 8
- 9 - 11
- 12 - 15
- 16 - 19
- 20 - 25



From 1 July 2022 to 31 December 2022 (25 weeks), at least one violent incident involving resistance actors had taken place in 207 townships (63 percent of all townships). Combining townships where EROs are currently present, and these townships, a total of 257 townships (78 percent) are currently at least contested.²

Armed conflict incidents (Feb. 2021 to Dec. 2022)

Number of events



Since the 1 February 2021 coup through 31 December 2022, there have been approximately 10,000 attacks and armed clashes between SAC forces, anti-SAC forces, EROs, and other unattributed groups.³

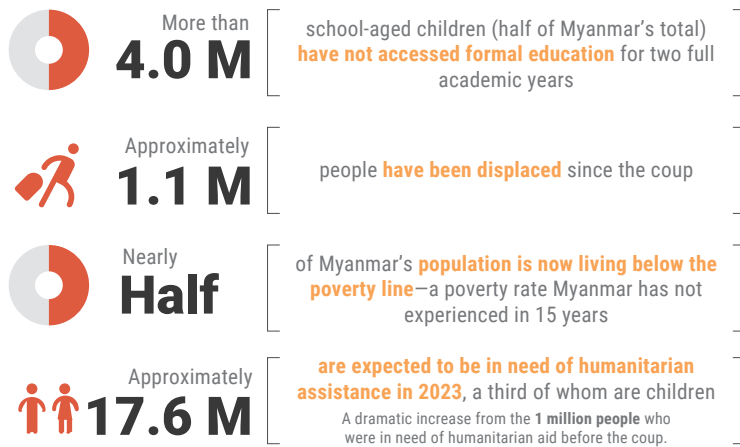
SHAM ELECTIONS IN 2023

Lacking constitutional and democratic legitimacy, and effective control of the country, the SAC will attempt to seek legitimacy in 2023 by orchestrating what it claims will be an “election.” **The Special Rapporteur strongly urges all Member States to refrain from wittingly or unwittingly providing the junta with the opportunity to manufacture the veneer of a legitimate election.**

Offering rhetorical or practical support for elections would have the effect of prolonging the instability and rights violations that are plaguing the country. **The international community must stand with the people of Myanmar and reject the junta’s sham elections.**

SAC’S FAILURE TO ADMINISTER

The SAC has also proven itself incapable of effectively administering Myanmar in the face of widespread conflict and resistance, further demonstrating its lack of control and long-term viability.



Among all large countries in the East Asia and Pacific region, Myanmar alone will likely fail to reach pre-pandemic GDP levels in 2023.

INTERNATIONAL COMMUNITY’S RESPONSE

General rejection: The international community has, by and large, refused to accept the SAC’s claim to be the legitimate government of Myanmar. The UN Credentials Committee has prevented the junta from occupying Myanmar’s seat at the General Assembly.⁴ The UN General Assembly called upon “**the Myanmar armed forces to respect the will of the people as freely expressed by the results of the general election of 8 November 2020**” (Resolution 75/287). The Association of Southeast Asian Nations (ASEAN) has barred junta representatives from key ASEAN meetings, and Indonesia’s Foreign Minister, representing the new ASEAN Chair, stated on 29 December 2022, “**ASEAN must not be dictated by the Myanmar military junta.**”⁵

Actions taken that deny legitimacy: Most democratic States do not explicitly recognize, nor engage with the SAC, as the government of Myanmar. States that have taken actions to de-legitimize the SAC or deny it recognition include **Australia, Canada**, the twenty-seven Member States of the **European Union, Japan, Lichtenstein, New Zealand, Norway, the Republic of Korea, Switzerland, the United Kingdom**, and the **United States of America**.

Actions that confer the impression of legitimacy: A small minority of States, including **Belarus, China, India, Russia, Saudi Arabia, and Sri Lanka** have implicitly supported the junta’s claim as the government of Myanmar by taking actions that are tantamount to recognition. These

NATIONAL UNITY GOVERNMENT

Democratic Legitimacy: The NUG represents the will of the people of Myanmar as expressed in the November 2020 elections. The NLD won 396 of the 498 contested seats in Parliament. The Committee Representing maybe the Pyidaungsu Hluttaw [Parliament], made up of lawmakers representing 80 percent of all elected parliamentarians, formed the National Unity Government in consultation with a nascent National Unity Consultative Council.

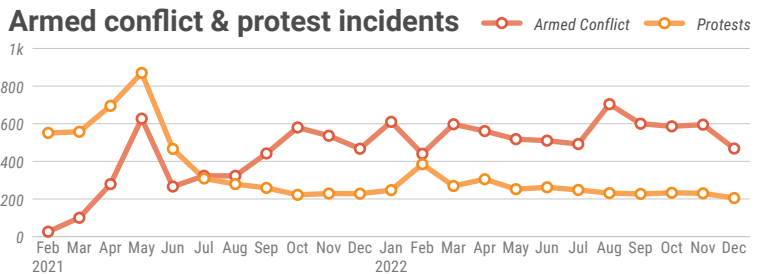
Strong case for being the Legitimate Representative of the People of Myanmar: The National Unity Government has a strong claim to being the “legitimate representative of the people,” four considerations of which are:

- 1 seeking to replace a government that has lost legitimacy,
- 2 being representative,
- 3 being broad, and
- 4 being sustainable.

DENIAL OF HABITUAL OBEDIENCE

The people of Myanmar have manifested their refusal to accept SAC rule not only through armed conflict, but through protests, labor strikes, refusal to pay utilities and taxes, and boycotts of military products.

Protests and armed conflict remain high (see graph). Incidents of visible protests have declined relative to their peak due to the SAC’s deadly crackdowns, but continue and opposition has been increasingly demonstrated through armed clashes against the military.



include presenting diplomatic credentials to SAC leadership, strengthening bilateral economic and military relations with the SAC, and—in the case of at least **Belarus** and **India**—publicly engaging with the SAC on its plans to hold sham elections. None of these States have publicly indicated having engaged with the National Unity Government. The limited engagement of some other States has been used by the SAC in an attempt to advance its claims of legitimacy. These include **Australia, Bangladesh, Japan, the Republic of Korea, and South Africa**.

ASEAN: ASEAN Member States appear divided over ASEAN policy vis-à-vis the SAC. **Brunei Darussalem, Indonesia, Malaysia, the Philippines, and Singapore** have reduced diplomatic engagement with the SAC and have rejected its claims of legitimacy. Some of these Member States have also engaged with the National Unity Government. **Cambodia, Lao People’s Democratic Republic, Thailand and Viet Nam**—have engaged the SAC as if it were the government of Myanmar. Even some of the governments that have engaged the SAC, however, recognize the plain truth—the junta lacks legitimacy. **Viet Nam**, for example, stated, “[C]ontact, exchange and cooperation activities with Myanmar within bilateral settings or ASEAN frameworks should not be interpreted as or equated with a recognition of the military government or the State Administration Council.” **Cambodia** meanwhile stated, “[I]t is seriously misleading to equate such engagements with legitimizing them.”

RECOMMENDATIONS

All UN Member States:

- ▶ Diplomatically isolate the SAC. Deny it opportunities to propagandize legitimacy at every opportunity
- ▶ Initiate a strategic approach to strengthen and coordinate economic sanctions and an arms embargo on the SAC. Prioritize sanctioning MOGE, aviation fuel, and key SAC-controlled financial channels, including the Myanmar Foreign Trade Bank
- ▶ Reject the SAC's attempt to hold sham elections, publicly call out the SAC for lacking the authority to hold credible elections, and refuse to engage or indicate support for the SAC
- ▶ Increase engagement with the National Unity Government. Provide recognition as the legitimate representative of Myanmar and begin providing appropriate support to help ensure its sustainability, including technical support in increasing trust between the NUG and EROs
- ▶ Engage directly with EROs supporting the pro-democracy movement and provide technical assistance and resources to them
- ▶ Refuse to provide financial or material support to the SAC

ASEAN Member States:

- ▶ Publicly distance themselves from the SAC and condemn its actions; call for the SAC to end human rights violations, release political prisoners, and allow the formation of a legitimate government reflecting the will of the people
- ▶ Support the enforcement of international sanctions in your jurisdictions and cooperate with international investigations into SAC finances
- ▶ Increase engagement with the National Unity Government. Welcome the NUG to regional meetings, seek its uniquely valuable perspective and expertise on meeting critical challenges including addressing the growing humanitarian catastrophe, provide recognition as the legitimate representative of Myanmar, and begin providing appropriate support to help ensure its sustainability. This includes technical support in increasing trust between the NUG and EROs
- ▶ Engage directly with EROs and provide technical assistance and resources

Australia, Japan, New Zealand, and the Republic of Korea, all of which have imposed sanctions in the context of the Russia-Ukraine conflict but not the Myanmar crisis, act immediately to impose sanctions on the SAC and its interests

Belarus, China, India, Russia, Saudi Arabia, and Sri Lanka:

- ▶ Reconsider and reverse policies and actions that are tantamount to recognizing or otherwise legitimizing the SAC
- ▶ For those countries with land or maritime borders with Myanmar, limit engagement strictly to security concerns involving territory controlled by the SAC and qualify it as such
- ▶ Do not provide financial or material support to the Myanmar military

The National Unity Government:

- ▶ Continue to broaden its base of support to demonstrate to the maximum extent possible that it is the legitimate representative of the people of Myanmar
- ▶ Promote additional ethnic minorities, including Rohingya, into meaningful positions of influence and power within the government
- ▶ Increase dialogue and advance negotiations with EROs, civil society, and other stakeholders concerning the political and constitutional framework for a future peaceful, democratic Myanmar

The UN Security Council, General Assembly, and Human Rights Council:

- ▶ Reject the SAC's so-called "elections" as illegitimate
- ▶ Confirm that the SAC is not recognized as the legitimate government of Myanmar
- ▶ Express support for the National Unity Government, including by urging Member States to engage and recognize the NUG

UN agencies:

- ▶ Conduct due diligence before inviting Member States to conferences to ensure that SAC representatives are excluded. UN Office of Legal Affairs: instruct all UN funds, agencies, programs, and affiliates that the SAC should not be invited to any UN conferences or meetings

Regional and global election monitoring and support organizations:

- ▶ Expressly disavow and reject the SAC's planned elections for 2023, publicly stating that free and fair elections are impossible under these extreme circumstances and committing not to support the elections in any way

Donors:

- ▶ Exercise flexibility with their recipients and, in particular, not require NGOs operating in Myanmar to register with the SAC as a condition for receiving funding and support

1 The data for the maps were prepared by independent analysts working with the Special Rapporteur, using primary sources, including maps and statements issued by ethnic organizations, as well as secondary sources, including academic and think-tank reports, combined with analysis of conflict records. Since 2014, they have tracked publicly reported conflict incidents in social media, news reporting, and other online sources in Burmese, English, Thai, and Chinese (Mandarin) as well as major ethnic languages spoken in Myanmar, including Jingphaw, Shan, S'gaw Karen, Po Karen, Karenni, Kayan, Arakan, Chin, Ahka, Lahu, Lisu, Wa, Ta'ang, and Hindi. Researchers often verify reported conflict incidents with ground sources. See also, The Asia Foundation, *The Contested Areas of Myanmar: Subnational Conflict, Aid, and Development*, 16 Oct 2017, <https://asiafoundation.org/wp-content/uploads/2017/10/ContestedAreasMyanmarReport.pdf> (a detailed study on contested areas of Myanmar, finding that "approximately 118 of Myanmar's 330 townships [or 36 percent] are affected to some extent by conflict and associated tensions between the government and ethnic armed organizations").

2 This does not necessarily mean that the SAC only has control in 22 percent of Myanmar, but rather gives an indication of the extent to which territorially, the SAC is being challenged.

3 Analysts working with the Special Rapporteur collected 9,999 instances of armed clashes from 1 February 2021 to 31 December 2022. The Special Rapporteur also considered data from ACLED, as presented and analyzed by The International Institute of Strategic Studies, available at *The Myanmar Conflict Map*, <https://myanmar.iiss.org/>, accessed 2 January 2023. At the time of writing, ACLED data from IISS was available through 31 October 2022 and included 9,833 instances of armed clashes.

4 A/77/600, Report of the Credentials Committee, 12 Dec 2022.

5 Tempo, Indonesian Foreign Minister: Myanmar Junta to Not Dictate ASEAN, 29 Dec 2022, <https://en.tempo.co/read/1673692/indonesian-foreign-minister-myanmar-junta-to-not-dictate-asean>

* The names shown and designations used on these maps do not imply official endorsement or acceptance by the United Nations.