

The Exodus of Rohingyas and Malaysia's International Legal Obligations towards Refugees

Shaun Kang

Outline

- 1. Who are the Rohingya people?**
- 2. Refugees in Malaysia**
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1. Who are the Rohingya People?



Source: UNHCR, South-East Asia, Mixed Maritime Movement

- Muslim minority mainly from the Rakhine State of Myanmar
- Stateless after the 1982 Citizenship Act was enacted. The Act does not recognise the Rohingyas as an ethnic group
- Conditions in Myanmar: face various restrictions, discrimination, ethnic clashes

Today? Unlikely to change.

“We won’t use the term Rohingya because Rohingya are not recognized as among the 135 official ethnic groups”

Mr Kyaw Zay Ya, spokesperson to Aung San Suu Kyi, May 2016.

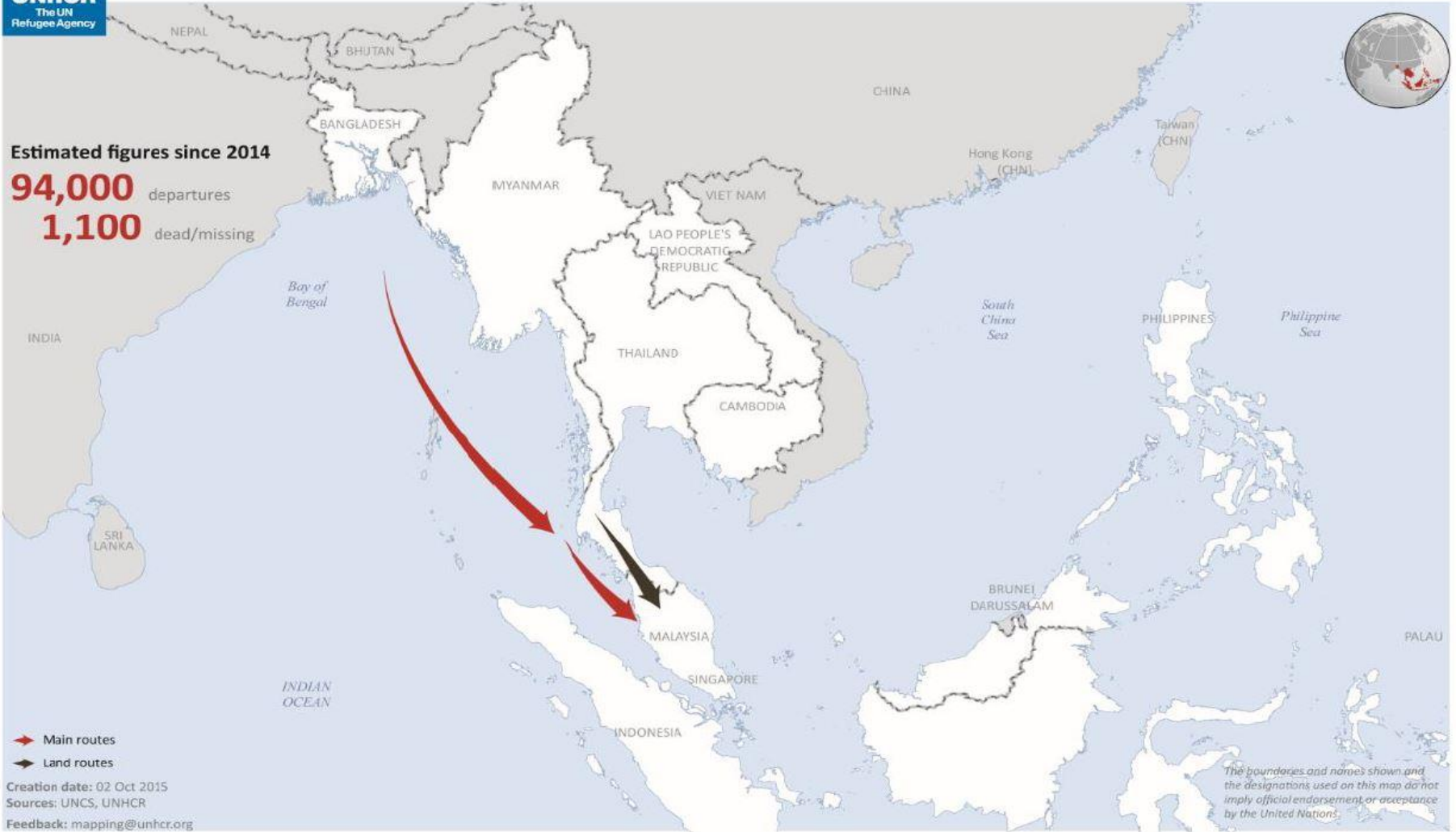


South East Asia: Mixed maritime movements

as of 02 October 2015

UNHCR HQ

Estimated figures since 2014
94,000 departures
1,100 dead/missing



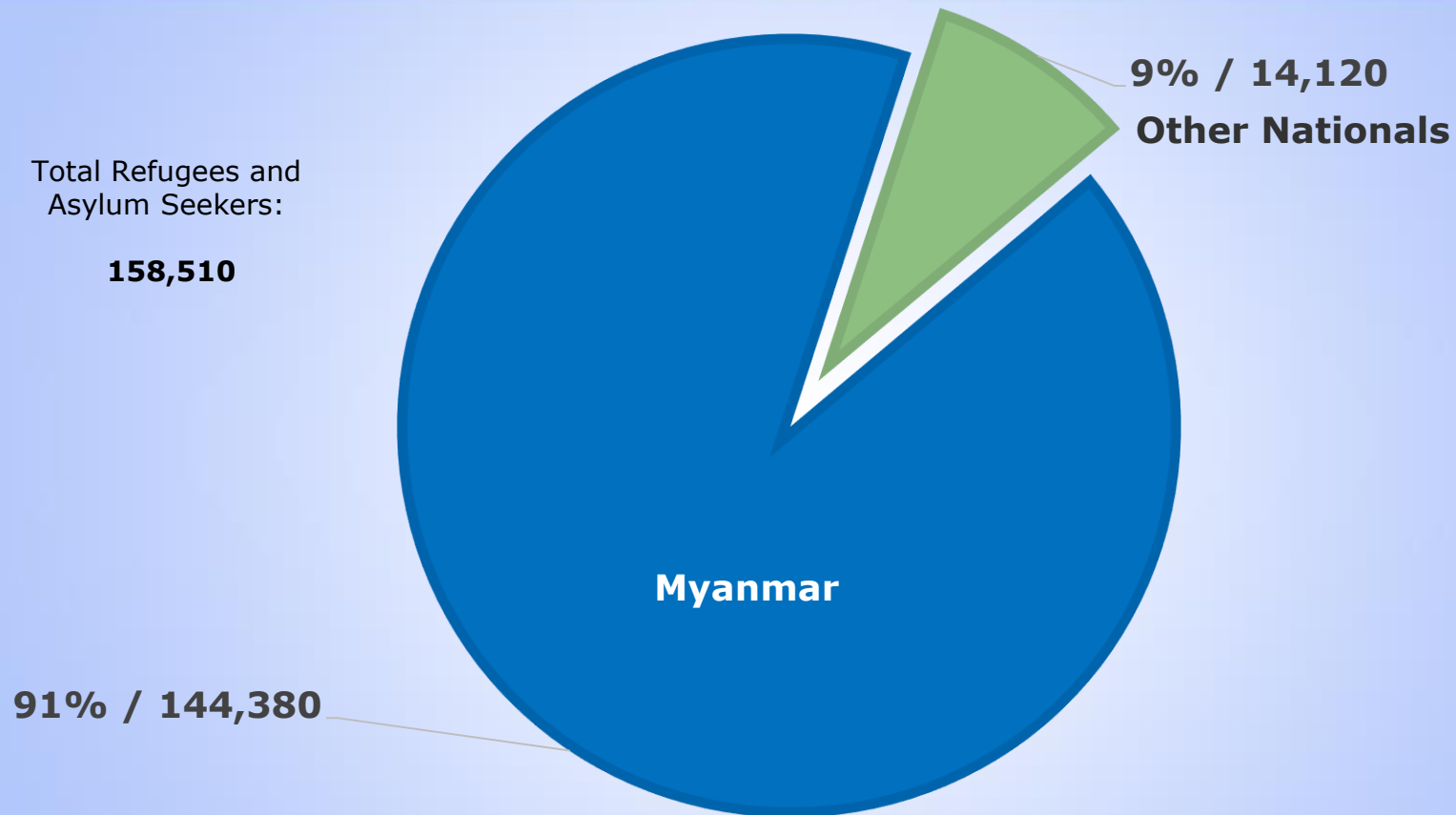
Creation date: 02 Oct 2015
Sources: UNCS, UNHCR
Feedback: mapping@unhcr.org

The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

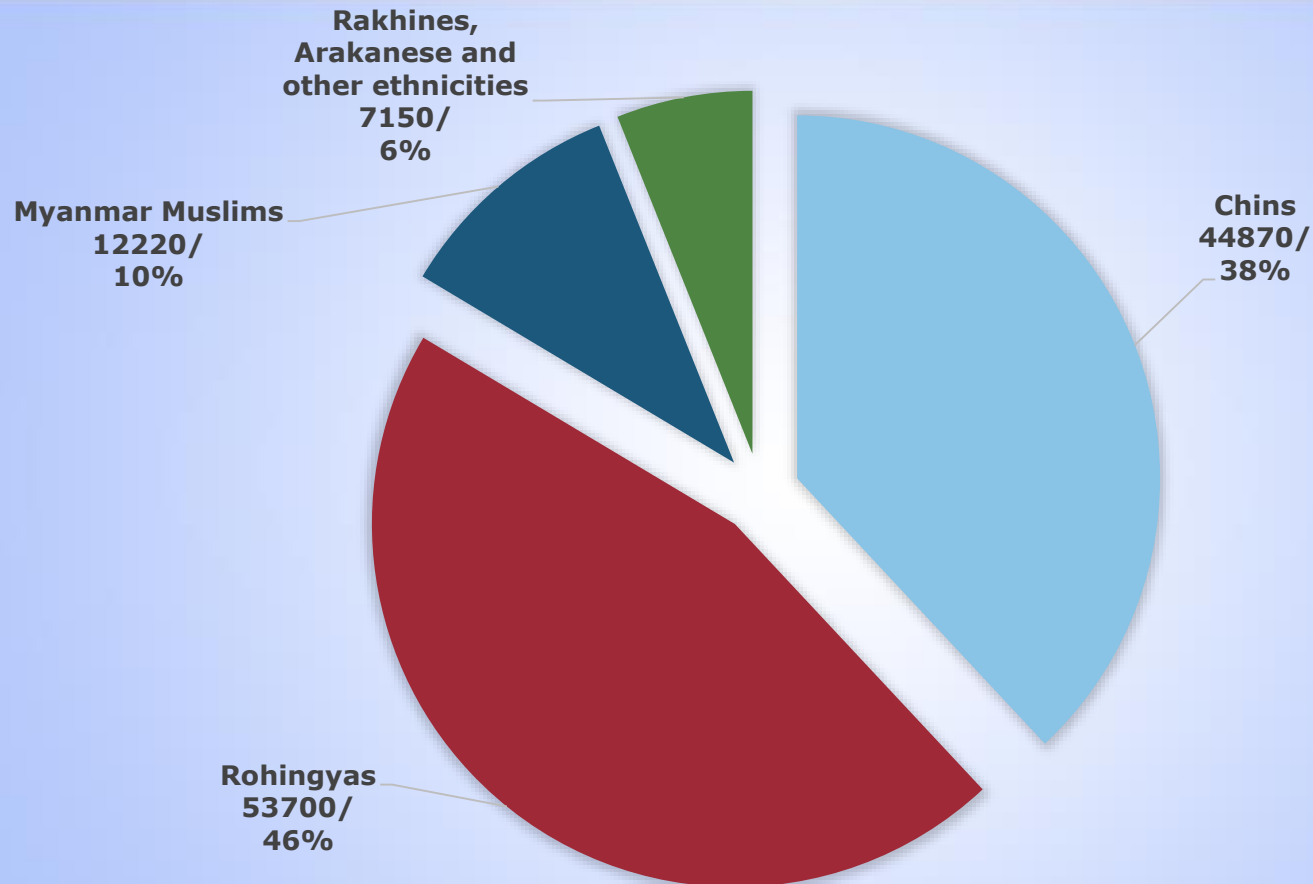
- In 2015, there was a large influx of Rohingyas in Malaysia, Thailand, Indonesia. (estimated 33,600 refugees and migrants travelled through sea route)
- According to UNHCR, these movements were “three times more deadly” than in the Mediterranean in 2015

2. Refugees in Malaysia

REFUGEES IN MALAYSIA AS OF FEBRUARY 2016



MYANMAR REFUGEES IN MALAYSIA



Government's Position

- Not a party to the Refugee Convention and its Protocol
- No legal framework to recognise refugees in Malaysia
- UNHCR's field office in Malaysia carries out all processes relating to the processing of refugee status and resettlement
- Malaysia acts as a transit point before durable solutions are found for refugees which often take the form of repatriation or resettlement.

Government's Position

“Malaysia is not a state party to the Refugee Convention 1951 and its Protocol of 1967. Accordingly, the Government does not recognise and issue cards to refugees”

*Minister in the Prime Minister's Department Dato' Shahidan
Malaysia Hansard, December 2015*

“Malaysia can no longer accept the presence of refugees and asylum seekers as they often contribute to social and economic problems and disrupt the peace of the country”

*Minister in the Prime Minister's Department Dato' Shahidan
Malaysia Hansard, March 2016*

Treatment of Refugees in Malaysia

(i) Protection

- Not legally recognised
- Arrested, charged, imprisoned and corporal punishment
- Prolonged administrative detention
- No legal rights to work
- Rohingya children born stateless, many others born without birth registration

Treatment of Refugees in Malaysia

(ii) Health

- Difficulties accessing healthcare
- Both physical and monetary barriers

Treatment of Refugees in Malaysia

(iii) Education

- Children have little/ no access to formal education

Acceptance of 3,000 Syrian Refugees

“I am pleased to announce today that, to help alleviate the current refugee crisis, Malaysia will do its share, and open our doors to a further 3,000 Syrian migrants over the next three years.”

“People around the world cry out for our help. We cannot-we must not- pass on by.”

Prime Minister Najib Razak at the 70th Session of the General Assembly, October 2015

3. Malaysia's International Legal Obligations

States party to the:

1. CRC
2. CEDAW
3. UNCLOS
4. UN Charter

Bound by:

1. Customary International law
2. Peremptory Norm of General International Law

1. Protection

- Turning away of boats – non-refoulment, UNCLOS, customary international law
- Arrest and detention of minors – Article 22 CRC
- Prolonged administrative detention – Violation of customary international law
- Right to citizenship/ birth registration – Article 7 CRC (reservation to this article inconsistent with object and purpose of the CRC (Article 51 CRC))

2. Health

- Antenatal care – Article 12 CEDAW, General Comment No. 32
- Healthcare of the child – Article 24(1) CRC

3. Education

- Education to be made available to all children-
Article 28, reservations inconsistent with object
and purpose of treaty, Article 3(1)- Best
interest of the child.

Other issues

- Differential treatment between the 3,000 Syrian refugees and the other refugees and asylum seekers- discrimination?
- Co-operation with UNHCR as a subsidiary organ of the UN – Art 56 UN Charter

4. Paradigm Shift in Perspectives?

- Malaysia requires manpower for development
- Denying health care to refugees and asylum seekers poses a threat to the host population
- Denying the right to education to refugee children is denying them of a better future
- Malaysia's reputation in upholding the rule of law internationally.

“Migration is and always has been a major contributor to economic growth - through remittances, entrepreneurship, strengthened trade relations and more. Refugees are famously devoted to education and self-reliance”

UNSG Ban Ki-moon, May 2016

Conclusion

- Rohingyas will continue to flee from Myanmar as long as the persecution against them continues.
- Malaysia continues to be bound by treaty obligations, customary international law, peremptory international law.
- A change in perspective is necessary in the interest of both the Government and the refugees, asylum seekers.