

# Unraveling the Mystery of People Smuggling Networks

Written by Marie Ngiam

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MARIE NGIAM, JUL 11 2012

Much has been written about the complicity of people smugglers and their networks in transporting asylum seekers onto Australian shores. People smuggling feeds on the desperation of individuals and families seeking to flee their countries of origin in search of better lives, while the impetus ranges from social and economic reasons to those fleeing wars or political persecution. In these situations, there is no shortage of people smugglers waiting to exploit these people. In fact, this lucrative activity is estimated by the International Organisation of Migration to generate a turnover worth US\$10 billion.[1]

In Australia, the arrival of 'boat people' has generated intense political debate. Former Prime Minister Kevin Rudd labeled people smugglers as 'being engaged in the world's most evil trade' and representing 'the absolute scum of the earth'[2] whilst current Prime Minister Julia Gillard asserted that people smuggling was 'an evil trade to be punished'.[3] Nevertheless, a viable and acceptable political solution continues to elude the government on this issue as is demonstrated by the failure of the much maligned 'Malaysia Solution'. Compounding its problem is Australia's geographical proximity to Indonesia, the main transit country. Only 340 km separates the Australian Territories of Christmas Island from the Indonesian Island of Java while the Indonesian Island of Roti lies just 150 km from Ashmore Reef.[4]

### **Yet, what do we know of these smuggling networks?**

People smuggling networks have often been examined through the prism of organised crime of which it forms a subset.[5] In turn, organised crime is often divided into the traditional model and the enterprise model. The traditional model is hierarchical and has a pyramid-like structure. It is also centralised and consists of vertical relations between members, governed by a set of rules and regulations and clear divisions of labour and chains of command.[6]

On the other hand, the enterprise or the network model is adaptable and flexible, consisting largely of horizontal relationships among its members.[7] It allows for a degree of independence from decisions and knowledge of head managers, thus ensuring greater flexibility and adaptability to consumer demand as well as law enforcement measures.[8] It is also organised only to the extent of carrying out illicit activities and as such, alliances between members are transitory.[9]

Despite the suggestion that smuggling operations are modeled after the enterprise model,[10] not all people smuggling networks can be characterised in the same way.[11] They have displayed much diversity in both their organisational as well as operational structure. This suggests that not all people smuggling networks can be characterised in the same way. Sue Hoffman suggests that there are three types of smuggling networks: individuals involved in transporting people and who consider smuggling as their secondary income generating activity and loose fluid networks of locally based smugglers with transnational contacts and shared ethnicity or kinship. Lastly, they also consist of hierarchical mafia or triad-like gangs that are highly organised and sophisticated.[12] Similarly, smuggling networks operating in Indonesia and targeting asylum seekers to transport to Australia from Indonesia show much diversity. Rebecca Tailby observes how their degree of criminal involvement and sophistication varies, from loose amateur groups concentrating on particular routes, through to transnational crime groups specialising in trafficking migrants for subsequent exploitation.

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Thus, some scholars observe that people smuggling operations in Indonesia are usually grass roots affairs, originating from within stranded refugee or local Indonesian communities,[13] and that the involvement of 'sinister' transnational organized crime groups in people smuggling operations is likely to be exaggerated.[14] On the other hand, others have noted that smuggling networks based in Indonesia have become increasingly covert and highly lucrative professional criminal enterprises[15] while smaller smuggling operations have been eliminated.[16]

Not surprisingly, empirical research on smuggling networks in Indonesia has generated differing views. Sue Hoffman suggests that people smuggling operations in Indonesia are usually grass roots affairs, originating from within stranded refugee or local Indonesian communities. As such, transnational crime groups are unlikely to be behind only smuggling networks operating to target Australia as the destination country. In contrast, Tony McInerney and Mary Crock have noted that smuggling networks based in Indonesia have become increasingly covert and highly lucrative professional criminal enterprises while smaller smuggling operations have been eliminated. Fiona David strengthens this view by pointing out how interceptions of sea vessels have revealed highly organised and highly sophisticated operations.

Nevertheless, stereotypical image of people smuggling networks as portrayed in the media, and reinforced by government and officials is often reflective of the traditional model: internationally active, pyramid-shaped and hierarchical in structure.[17] This still holds true in certain circumstances, such as Chinese smuggling networks operating between China and America.[18] It is one where a 'snakehead' oversees the whole smuggling operation and is not known to other members of the network nor the migrants who approach their network.[19]

## Adaptability and resilience of people smuggling networks

People smuggling networks in Indonesia have proven to be extremely adaptable and resilient within the environment in which they operate. A surge in maritime arrivals in September 2008 after a hiatus of several years has prompted Peter Munro to suggest that smuggling networks were able to resume operations almost immediately. He puts forward the theory that some smugglers never left Indonesia, while others who returned to their homes in the Middle East, West and South Asia subsequently returned to Indonesia. These networks were not dismantled, but rather remained dormant until favourable circumstances resumed.

Munro further observes how these smuggling networks are able to evolve and withstand tightening law enforcement measures and exploit loopholes in legislation, coastal surveillance and border controls. In doing so, they have shown adaptability in their range of tactics used to combat law enforcement measures. One strategy is to tow 'rescued' asylum seeker vessels to Christmas Island. This is because all vessels are bound to aid people in distress and the smugglers cannot be penalised for it. It also suggests that smugglers are knowledgeable not only on the various law enforcement measures but maritime law as well. Other tactics that have been used include the use of juveniles as they would receive lighter sentences if caught. This is reinforced by media reports on the increasing use of juveniles by people smugglers in their vessels.

## Actors involved in people smuggling

The definition of who a 'people smuggler' is has produced debate, heightened in light of new legislation that has expanded the existing definition under Australian domestic law. Under international law, migrant smuggling constitutes:

*"procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident."* [20]

Although the Smuggling Protocol refers to the smuggling of migrants, the definition of migrant smuggling encompasses asylum seekers as well[21] and thus applies to the Australian context. Australia's domestic legislation reflects this definition by providing that a person is guilty of the offence of people smuggling if the first person organises or facilitates the bringing or coming to Australia...of another person.[22] Yet recent amendments made to the Migration Act have resulted in the omission of a profit motive in criminalising people smuggling,[23] thus

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expanding the scope of what constitutes people smuggling. As such, a person may be found to be a smuggler according to the Migration Act, but not according to the Smuggling Protocol. Professor Ben Saul argues that this will transform its character beyond what is envisaged in international law.[24]

The amendments impose absolute liability for the offence of people smuggling. This means that an individual will be found guilty of people smuggling regardless of whether they have any intention to smuggle. This will criminalise masters of ships or pilots who unknowingly bring stowaways into Australia.[25] The liability appears to even extend to those who bring non-citizens into Australia who have presented apparently valid travel documents which turn out to be fraudulent.[26]

Professor Mary Crock explains that the amendments to the Migration Act are capable of capturing innocent groups of people such as refugee communities in Australia who send remittances to their families.[27] They will be implicated if the remittances are used to pay people smugglers for passage of their loved ones to Australia, regardless of whether they knew of such purpose for which the money was used.[28]

Nevertheless, contestation over the scope of people smugglers exists even if the definition according to international law were to be applied. Academics[29] as well as judges[30] have argued that members of organised crime syndicates and individuals such as Indonesian boat crew should be distinguished. The latter are not people smugglers. They are mostly impoverished and uneducated Indonesian fishermen who bring boats into Australian waters and are paid by profiteering members of criminal syndicates.[31] As opposed to other members of smuggling operations, they merely facilitate the journey of asylum seekers in their boats.[32]

Contestations over who can be considered a 'people smuggler' reflect the diversification of activities involved in people smuggling operations. It ultimately requires the involvement of a range of actors. These actors range from financiers who invest money in the smuggling operation and who are rarely known to lower level employees or individuals being smuggled, to recruiters: the middlemen between the financiers and customers.[33] Other actors include informers who gather information on border surveillance, immigration procedures and regulations, enforcers who police asylum seekers and maintain order among them as well as debt collectors who are in charge of collecting fees in transit or destination countries.[34] Lastly, local guides and crew members in transit countries are employed by smugglers to charter smuggling vessels.[35] However, Khalid Koser widens those involved in smuggling operations.[36] He suggests that corrupt public officials in immigration and law enforcement as well as airline staff in transit countries have been found to be complicit in the trade especially among international smuggling networks. These actors are no longer 'third world crooks'[37] but people working at airports, British Embassy personnel as well as staff working in various international airlines.[38]

While 'top' smugglers are yet to be identified, they are most often members of an almost entirely monoethnic network of people smugglers who are responsible for establishing prices, meeting points and regulate methods of payment.[39] They should thus be distinguished from hired service providers. The latter consist of local smuggling groups who have been outsourced to perform the actual smuggling.[40] In Indonesia, these local smuggling groups are local Indonesian fishermen, farmers and other people living in stressed economic conditions. They represent boat crew members who transport asylum seekers to Australian waters.[41]

In addition, the role of that financiers of smuggling networks play are extremely elusive and rarely known to lower level employees and the migrants they smuggle. These financiers reap the profits of smuggling operations and are not directly involved in the commission of the crime.[42] Yet in Indonesia, the role of 'top' smugglers is not as straightforward. There is evidence that in addition to these 'top' smugglers, smuggling syndicates operate with the support of local police, immigration and visa officials. They make money from these operations but according to Hoffman, are 'effectively untouchable'.[43]

## Diversification of the people smuggling trade

Lastly, there is evidence suggesting that smuggling networks diversify into other criminal activities. During the Regional Bali Process, Foreign Ministers around the Asia-Pacific Region indicated how smuggling networks were

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orchestrated by criminals involved in other illicit activities such as drug trafficking, document fraud, money laundering arms smuggling and other transnational crimes.[44] The National Crime Authority Commentary shared similar sentiments, linking illegal migration, heroin dependency, some instances of prostitution and associated criminal activity.[45]

Scenarios where the line between people smuggling and people trafficking is blurred give credence to this argument. It suggests that smuggling ventures can be diversified into other crimes such as people trafficking operations. Migrants may voluntarily use the services of smugglers and consent to being smuggled initially but later find themselves in situations where they are victimised or exploited by traffickers. This is usually the case where the terms that are being consented to are fraudulent or deceitful, nullifying their initial consent.[46] For example, individuals being smuggled may be charged a phenomenal amount of money for their transportation along the way to their destination country. If this amount is not paid upfront, this results in 'debt bondage' between the individual being smuggled and his transporters once the destination is reached.[47] It thus constitutes the crime of 'trafficking' since the migrant is being exploited by the transporters so as to minimise and eventually make good her debt. This scenario might be played out, in light of the Malaysian Solution that was initially put forward by the government earlier this year. In response to the possibility that asylum seekers might be deported back to Indonesia, *The Age* published a report on how people smugglers devised a new 'travel now pay later method'. The report is based on interviews with Afghans in Indonesia, who point out that this method provides asylum seekers passage from Indonesia to Australia by boat for as little as \$US500 upfront, with the rest paid after they are granted residency and find work in Australia.[48] It thus raises the possibility of debt bondage occurring in Australia, should they fail to pay smugglers the remaining amount.

## Where to from here?

Despite the furore surrounding people smugglers and their networks, it is evident that this issue is a complex and multi-faceted one. While these networks remain largely shrouded in mystery, existing research has generated differing opinions. Even the definition of who people smugglers are, has come under scrutiny. In particular, judges presiding on cases involving Indonesian fishermen arrested on smuggling charges have argued that organisers of smuggling syndicates as opposed to individuals such as Indonesian boat crew should be distinguished. The latter are not people smugglers, but merely facilitators who make possible the journey for asylum seekers and paid by profiteering members of criminal syndicates.

Despite these disagreements, people smuggling networks seeking to target Australia have a number of common elements, such as their flexibility and adaptability, wide range of actors and potential to branch out into other organised crimes. While the Australian government has already put in much effort into curbing this scourge, the ability for asylum seekers to continue relying on the services of these networks suggests that much more needs to be done in order to stem out people smuggling. Although this is by no means an easy task, a starting point would be to focus on the empirical research on people smuggling networks targeting Indonesia, drawing from elements that are common to all people smuggling networks as a starting point. In addition, perhaps a return to the drawing board for a more extensive and exhaustive initiative between our regional neighbours especially with countries from which these networks operate is also needed.

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[2] 'Rudd: Human Smugglers "Scum of the Earth"', *CNN News* (Online), 17 April 2009

<[http://articles.cnn.com/2009-04-17/world/rudd.refugees\\_1\\_australian-history-refugees-prime-minister-kevin-rudd?\\_s=PM:WORLD](http://articles.cnn.com/2009-04-17/world/rudd.refugees_1_australian-history-refugees-prime-minister-kevin-rudd?_s=PM:WORLD)>.

[3] John Passant, 'In Praise of People Smugglers', *Sydney Morning Herald* (Sydney), 9 July 2010.

[4] Mary Crock, Azadeh Dastyari and Ben Saul, *Future Seekers II: Refugees and Irregular Migration in Australia*

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(Federation Press, 2nd ed, 2006) 112.

[5] *Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention against Transnational Organised Crime* ('Smuggling Protocol'), opened for signature 15 November 2000, 2241 UNTC 507 (entered into force 28 January 2004) art 1(1).

[6] Sheldon Zhang, *Chinese Human Smuggling Organisations: Families, Social Networks and Cultural Imperatives* (Stanford University Press, 2008) 133.

[7] Andreas Schloenhardt, 'Organised Crime and Migrant Smuggling: Australia and the Asia-Pacific' (Research and Public Policy Series No 44, Australian Institute of Criminology, 2002) 26.

[8] *Ibid.*

[9] Sheldon Zhang and Ko-Lin Chin, 'Enter the Dragon: Inside Chinese Human Smuggling Organisations' (2002) 40(4) *Criminology* 737, 740.

[10] United Nations Office on Drugs and Crime, *Smuggling of Migrants: A Global Review and Annotated Bibliography of Recent Publications*, UN Doc UNOV/DMI/CMS/EPLS (January 2011) 68.

[11] Sue Hoffman, Submission No 25 to Legal and Constitutional Affairs Legislation Committee, *Anti-People Smuggling and Other Measures Bill 2010 (Cth)*, 2.

[12] *Ibid.*

[13] Matthias Neske, 'Human Smuggling to and through Germany' (2006) 44(4) *International Migration*, 144-5.

[14] Diana Wong, 'The Rumor of Trafficking: Border Controls, Illegal Migration, and the Sovereignty of the Nation-State' in Willem van Schendel and Itty Abraham (eds), *Illicit Flows and Criminal Things: States, Borders and the Other Side of Globalisation* (Indiana University Press, 2005) 88.

[15] Tony McInerney, 'People Smuggling: An Inhuman Trade' (2000) 3 *Platypus*.

[16] Crock et al, above n 4, 46.

[17] Neske, above n 11, 123.

[18] Australian Broadcasting Corporation ('ABC'), 'Khalid Koser: Why Smuggling Pays', *ABC Big Ideas*, 29 July 2009 (Khalid Koser).

[19] Chin and Zhang, above n 9, 42.

[20] Smuggling Protocol, above n 5, art 3.

[21] *Ibid* art 3(a).

[22] *Migration Act 1958* (Cth) ('Migration Act') s 233A(2); *Anti-People Smuggling and Other Measures Act 2010* (Cth) sch 1 pt 1[8].

[23] *Ibid* s 233A(1)(c).

[24] Sydney Centre for International Law, Submission No 11 to Legal and Constitutional Affairs Legislation Committee, *Anti-People Smuggling and Other Measures Bill 2010 (Cth)*, 15 April 2010, 1-2.

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[25] Ibid 2.

[26] Ibid.

[27] Evidence to Legal and Constitutional Affairs Legislation Committee, *Anti-People Smuggling and Other Measures Bill 2010 (Cth)*, 16 April 2010 (Professor Mary Crock).

[28] Ibid.

[29] Sue Hoffman, Submission No 25 to Legal and Constitutional Affairs Legislation Committee, *Anti-People Smuggling and Other Measures Bill 2010 (Cth)*, 3.

[30] Aleisha Preedy, 'Six Years Jail for People Smuggler', *WA Today* (Perth), 18 April 2009; 'People Smuggler Jailed', *The Australian* (Canberra), 3 April 2009.

[31] Peter Munro, 'People Smuggling and the Resilience of Criminal Networks in Indonesia' (2011) 6(1)*Journal of Policing, Intelligence and Counter Terrorism* 40, 44.

[32] Asylum Seeker Resource Centre, Submission No 12 to Legal and Constitutional Affairs Legislation Committee, *Anti-People Smuggling and Other Measures Bill 2010 (Cth)* [35].

[33] Schloenhardt, above n 9, 34-6.

[34] Ibid.

[35] Ibid 36.

[36] ABC, above n 18.

[37] Ibid.

[38] Ibid.

[39] Ibid.

[40] Ibid.

[41] Munro, above n 31, 43.

[42] Schloenhardt, above n 9, 8.

[43] Sue Hoffman, Submission No 25 to Legal and Constitutional Affairs Legislation Committee, *Anti-People Smuggling and Other Measures Bill 2010 (Cth)*, 3.

[44] Bali Process, 'Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime' (Co-chairs' Statement, 26-28 February 2002) [5], <<http://www.baliprocess.net/files/ConferenceDocumentation/BRMC1.pdf>>.

[45] Phillip Ruddock, Minister for Immigration and Multicultural Affairs, 'Links between Organised Crime and People Smuggling' (Media Release, MPS 114/2001, 8 August 2001) 2.

[46] 'People Smuggling Versus Trafficking in Persons: What is the Difference?' (Transnational Crime Brief No 2, Australian Institute for Criminology, 2008) 2.

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[48] Tom Allard, 'Travel Discount Proves Alluring', *The Age* (Melbourne) 2 September 2011.

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